UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): November 15, 2018

WAITR HOLDINGS INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-37788**	**26-3828008**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

844 Ryan Street, Suite 300, Lake Charles, Louisiana 70601
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **1-800-661-9036**

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☒

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

Introductory Note

On November 15, 2018 (the "Closing Date"), Waitr Holdings Inc. (formerly known as Landcadia Holdings, Inc.), a Delaware corporation (the "Company"), consummated its previously announced acquisition of Waitr Incorporated, a Louisiana corporation ("Waitr"), pursuant to the Agreement and Plan of Merger, dated as of May 16, 2018 (the "Merger Agreement"), by and among the Company, Waitr Inc. (f/k/a Landcadia Merger Sub, Inc.), a Delaware corporation and wholly owned indirect subsidiary of the Company ("Merger Sub"), and Waitr. The transactions contemplated by the Merger Agreement are referred to herein as the "Business Combination."

No stockholders elected to have their shares redeemed in connection with the Business Combination.

Upon the consummation of the Business Combination, Waitr merged with and into Merger Sub, with Merger Sub surviving the merger in accordance with the Delaware General Corporation Law as a wholly owned indirect subsidiary of the Company. In connection with the closing of the Business Combination (the "Closing"), the Company changed its name from Landcadia Holdings, Inc. to Waitr Holdings Inc. Unless the context otherwise requires, the "Company" refers to the registrant and its subsidiaries, including Waitr and its subsidiaries, after the Closing, and "Landcadia" refers to the registrant prior the Closing.

Item 1.01. Entry into a Material Definitive Agreement.

Debt Financings

Debt Facility

Credit Agreement

On November 15, 2018, in connection with the Closing and pursuant to the previously disclosed debt commitment letter, dated October 2, 2018 (the "Debt Commitment Letter"), Merger Sub, as Borrower, entered into a Credit and Guaranty Agreement (the "Credit Agreement") with Luxor Capital Group, LP ("Luxor Capital"), as Administrative Agent, Collateral Agent and Lead Arranger, the various lenders party thereto, Waitr Intermediate Holdings, LLC, a Delaware limited liability company ("Intermediate Holdings"), and certain subsidiaries of Merger Sub, as Guarantors. The Credit Agreement provides for a senior secured first priority term loan facility to Merger Sub in the aggregate principal amount of $25,000,000 (the "Debt Facility").

Loans advanced under the Debt Facility will mature and be due and payable in full four years after the Closing Date, with no principal amortization payments required prior thereto. During the first 12 months following the Closing Date, Merger Sub is required to pay a prepayment premium of 5.0% of the principal amount to be prepaid in connection with (i) any prepayments (whether before or after an event of default), (ii) any payment, repayment or redemption of the obligations following an acceleration or (iii) certain bankruptcy events. Thereafter, the Debt Facility may be prepaid without penalty or premium.

Interest on borrowings under the Debt Facility accrue at a rate of 7.0% per annum, payable quarterly, in cash or, at the election of the borrower, as a payment-in-kind. Any amounts paid in kind will be added to the principal amount of the Debt Facility on such interest payment date (increasing the principal amount thereof) and will thereafter bear interest at the rate set forth above.

The Debt Facility is guaranteed by Intermediate Holdings and secured by (i) a first priority pledge of the equity interests of Merger Sub and (ii) a first priority lien on substantially all other assets of Merger Sub and Intermediate Holdings (subject to customary exceptions).

The Credit Agreement requires Merger Sub to maintain minimum consolidated liquidity (comprised of unrestricted cash of Merger Sub and its subsidiaries and unused availability under any revolving credit facilities of Merger Sub and its subsidiaries) of $15,000,000 as of the last day of each fiscal quarter.

The Credit Agreement also includes a number of customary negative covenants. Such covenants, among other things, limit or restrict the ability of each of Intermediate Holdings, Merger Sub and its subsidiaries to:

- incur additional indebtedness and make guarantees;
- incur liens on assets;
- engage in mergers or consolidations or fundamental changes;
- dispose of assets;
- pay dividends and distributions or repurchase capital stock;
- make investments, loans and advances, including acquisitions;
- amend organizational documents and other material contracts;
- enter into certain agreements that would restrict the ability to incur liens on assets;
- repay certain junior indebtedness;
- enter into certain transactions with affiliates;
- enter into sale leaseback transactions; and
- change the conduct of its business.

The aforementioned restrictions are subject to certain exceptions including (i) the ability to incur additional indebtedness, liens, investments, dividends and distributions, and prepayments of junior indebtedness subject, in each case, to compliance with certain financial metrics and/or certain other conditions and (ii) a number of other traditional exceptions that grant Merger Sub continued flexibility to operate and develop its business.

The Credit Agreement also includes customary affirmative covenants, representations and warranties and events of default.

Debt Warrants

In connection with the Debt Facility, the Company issued warrants to the lenders under the Debt Facility, exercisable for 384,615 shares of common stock (the "Debt Warrants"). The Debt Warrants became exercisable after the consummation of the Business Combination and (i) will expire four (4) years from the Closing Date, (ii) have an exercise price of $13.00 per share, and (iii) include customary anti-dilution protection, including broad-based weighted average adjustments for issuances of additional shares. Holders of the Debt Warrants have customary registration rights with respect to the shares underlying the Debt Warrants. In addition, the Company is required to repay the Debt Facility in full in the event that either (i) the registration statement for the resale of the shares of the Company's common stock ("common stock") underlying the Notes (as defined below) and Debt Warrants has not been filed within 30 days after the Closing Date, or (ii) such registration statement is not effective within 180 days after the Closing Date. Such repayment shall be payable within nine months after the Debt Facility becomes due.

The foregoing description of the Debt Warrants does not purport to be complete and is qualified in its entirety by the full text of the Debt Warrants, a form of which is attached hereto as Exhibit 4.4 and incorporated herein by reference. The foregoing description of the Debt Facility does not purport to be complete and is qualified in its entirety by the full text of the Credit Agreement and the Pledge and Security Agreement, dated as of November 15, 2018, by and among Merger Sub, the other Grantors party thereto, and Luxor Capital, as Collateral Agent, which are attached hereto as Exhibits 10.3 and 10.4 and are incorporated herein by reference.

Convertible Notes

On November 15, 2018, in connection with the Closing and pursuant to the Debt Commitment Letter, the Company entered into a convertible notes credit agreement (the "Convertible Notes Agreement"), pursuant to which the Company issued unsecured convertible promissory notes to Luxor Capital Partners, LP, Luxor Capital Partners Offshore Master Fund, LP, Luxor Wavefront, LP and Lugard Road Capital Master Fund, LP (collectively, the "Convertible Note Purchasers") in the aggregate principal amount of $60,000,000 (the "Notes" and together with the Debt Facility the "Debt Financings"). The Notes bear interest at 1.0% per annum, paid quarterly in cash, and will mature four years from the date of the Closing, unless earlier converted at the election of the holder. Upon maturity, the outstanding Notes (and any accrued but unpaid interest) will be repaid in cash or converted into shares of common stock, at the holder's election.

At any time at the holder's election, each Note may be converted in whole or in part into shares of common stock at a rate of $13.00 per share (subject to a 9.9% conversion cap). The Notes include customary anti-dilution protection, including broad-based weighted average adjustments for issuances of additional shares, and the shares issuable upon their conversion have certain registration rights.

The Company may only prepay the Notes with the consent of the holders of at least a majority-in-interest of the outstanding Notes.

The Company's payment obligations on the Notes are not guaranteed. The Convertible Notes Agreement contains negative covenants, affirmative covenants, representations and warranties and events of default that are substantially similar to those that are set forth in the Credit Agreement and applicable to Merger Sub (except those that relate to collateral and related security interests, which are not contained in the Convertible Notes Agreement or otherwise applicable to the Notes).

The foregoing description of the Convertible Notes Agreement and Notes does not purport to be complete and is qualified in its entirety by the full text of the Convertible Notes Agreement, a copy of which is attached hereto as Exhibit 10.5 and is incorporated herein by reference, and the full text of the Notes, a form of which is attached hereto as Exhibit 10.6 and is incorporated herein by reference.

Private Placement Warrant Exchange

In connection with the Debt Financings, Landcadia's co-sponsors, Fertitta Entertainment, Inc. ("FEI") and Jefferies Financial Group Inc. ("JFG" and together with FEI, the "Sponsors"), exchanged the 14,000,000 warrants purchased by them in connection with Landcadia's initial public offering ("private placement warrants") for 1,600,000 shares of common stock. In addition, the Company repaid FEI $1,250,000 in cash and issued to FEI 75,000 shares of common stock at the Closing in full satisfaction of FEI's prior $1,500,000 convertible loan to the Company.

Registration Rights Agreements

Amended and Restated Registration Rights Agreement

On November 15, 2018, in connection with the Closing, the Company entered into an amended and restated registration rights agreement (the "A&R Registration Rights Agreement") with the Sponsors and the investors named on the signature pages thereto (collectively, the "Investors") that amends and restates that certain registration rights agreement, dated May 25, 2016, by and among Landcadia and certain of its initial investors. The A&R Registration Rights Agreement provides certain registration rights to the Investors and provides that the Company will, not later than 120 days after the Closing, file a registration statement covering (i) the shares of common stock issued at the Closing upon conversion of the shares of Landcadia's Class F common stock (the "founder shares"), (ii) the private placement warrants (including any common stock issued or issuable upon exercise of any such private placement warrants) and (iii) the Company's shares issued to former securityholders of Waitr (the "Waitr securityholders") at the Closing. Subject to certain exceptions, the Company will bear all Registration Expenses (as defined in the A&R Registration Rights Agreement).

The foregoing description of the A&R Registration Rights Agreement does not purport to be complete and is qualified in its entirety by the full text of the A&R Registration Rights Agreement, the form of which is attached hereto as Exhibit 10.7 and is incorporated herein by reference.

Debt Financing Registration Rights Agreement and Side Letter

On November 15, 2018, in connection with the Closing and the Debt Financing, the Company entered into a registration rights agreement (the "Luxor Registration Rights Agreement") with Luxor Capital and the Convertible Note Purchasers. The Luxor Registration Rights Agreement provides certain registration rights to the Convertible Note Purchasers and provides that the Company will, not later than 30 days after the Closing, file a registration statement covering (i) the Debt Warrants and the shares of common stock issuable upon conversion of the Debt Warrants and (ii) the shares of common stock issuable upon conversion of the Notes. Subject to certain exceptions, the Company will bear all Registration Expenses (as defined in the Luxor Registration Rights Agreement). The Company also entered into a letter agreement (the "Convertible Notes Side Letter") with the Convertible Note Purchasers providing that lenders under the Convertible Notes Agreement holding Term Loan Exposure (as defined in the Convertible Notes Agreement) representing more than 50% of the aggregate Term Loan Exposure of all lenders may require the Company to (i) exchange all or any portion of their Notes for new convertible notes of the Company issued pursuant to an indenture that complies with the Trust Indenture Act of 1939, as amended, and (ii) register the resale of such new notes.

The foregoing descriptions of the Luxor Registration Rights Agreement and Convertible Notes Side Letter do not purport to be complete and are qualified in their entirety by the full text of the Luxor Registration Rights Agreement and Convertible Notes Side Letter, copies of which are attached hereto as Exhibits 10.8 and 10.9, respectively, and are incorporated herein by reference.

Employment Agreements

Christopher Meaux

On November 15, 2018, the Company entered into an employment agreement with Christopher Meaux (the "Meaux Agreement"), pursuant to which Mr. Meaux will serve as the Company's Chief Executive Officer. The Meaux Agreement has an indefinite term that will continue until terminated in accordance with its terms. The Meaux Agreement provides for an annual salary equal to $450,000, and a target annual cash bonus equal to $450,000, based upon the attainment of certain performance metrics determined by the Company's board of directors (the "Board"). Additionally, pursuant to the Meaux Agreement, Mr. Meaux is entitled to reimbursement of up to a maximum of $20,000 for reasonable legal fees incurred in negotiating and drafting the Meaux Agreement.

Mr. Meaux will be able to participate in the same incentive compensation and benefit plans in which other senior executives of the Company are eligible to participate. Pursuant to the Meaux Agreement, at the Closing Mr. Meaux was granted 250,000 shares of restricted stock (the "Restricted Stock Award"), subject to the terms of the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "Incentive Plan"), which will vest in three (3) equal installments over a three-year period following the grant date.

If the Company terminates Mr. Meaux's employment for cause (as defined in the Meaux Agreement) or if he terminates his employment without good reason (as defined in the Meaux Agreement), Mr. Meaux will be entitled to receive (i) all accrued salary through the date of termination, (ii) reimbursement of expenses properly incurred in the course of employment, and (iii) any post-employment benefits due under the terms and conditions of the Company's benefits plans (collectively, the "Meaux Accrued Amounts"). Mr. Meaux will not be entitled to any additional amounts or benefits as the result of a termination of employment for cause or by Mr. Meaux without good reason.

If the Company terminates Mr. Meaux's employment without cause, or if Mr. Meaux terminates his employment for good reason, Mr. Meaux will be entitled to receive (i) the Meaux Accrued Amounts, (ii) any accrued but unpaid annual bonus for the year prior to termination, (iii) 1.5 times his base salary, (iv) a pro rata portion of the annual bonus for the year of termination based on actual results and based on the number of days in the fiscal year for which he was employed to the number of days remaining in the year, (v) if Mr. Meaux timely and properly elects health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), reimbursement for 100% of the monthly COBRA premium paid by Mr. Meaux for himself and his dependents until the earlier of the date he is no longer eligible for COBRA coverage, receives such coverage under another employer's group health plan or 18 months following the date of termination (the "COBRA Payments"), and (vi) the Restricted Stock Award will vest in full.

If Mr. Meaux's employment is terminated by the Company without cause, or if Mr. Meaux terminates his employment for good reason, in each case, within 12 months following a "change in control" (as defined in the Incentive Plan), Mr. Meaux will be entitled to receive (i) the Meaux Accrued Amounts, (ii) 2 times his base salary, (iii) the target annual cash bonus for the year of termination, (iii) the Restricted Stock Award will vest in full, and (iv) if Mr. Meaux timely and properly elects health continuation coverage under COBRA, the COBRA Payments.

If Mr. Meaux's employment is terminated by the Company due to his death or disability, he will be entitled to receive (i) the Meaux Accrued Amounts and (ii) any post-employment benefits due under the terms and conditions of the Company's benefit plans. Mr. Meaux or his beneficiaries will not be entitled to any additional amounts or benefits as the result of a termination of employment due to death or disability.

Mr. Meaux's eligibility and entitlement, if any, to each severance payment and any other payment and benefit described above is subject to the execution and non-revocation of a release of claims agreement by him.

Mr. Meaux is also subject to the general confidentiality obligations in the Meaux Agreement as well as non-compete and non-solicitation restrictions for a period of 24 months from the date of separation.

The Meaux Agreement contains "clawback" provisions that enable the Company to recoup any amounts paid to Mr. Meaux under the Meaux Agreement if so required by applicable law or any applicable securities exchange listing standards.

If amounts payable to Mr. Meaux under the Meaux Agreement exceed the amount allowed under Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), for him (thereby subjecting Mr. Meaux to an excise tax), then such payments due to Mr. Meaux will either (i) be reduced (but not below zero) so that the aggregate present value of the payments and benefits received by Mr. Meaux is $1.00 less than the amount which would otherwise cause Mr. Meaux to incur an excise tax under Section 4999 of the Code or (ii) be paid in full, whichever results in the greatest net after-tax payment to such executive.

The foregoing description of the Meaux Agreement does not purport to be complete and is qualified in its entirety by the terms and conditions of the Meaux Agreement, which is attached hereto as Exhibit 10.10 and is incorporated herein by reference.

Offer Letters

Travis Boudreaux

On November 15, 2018, the Company entered into an offer letter (the "Boudreaux Letter") with Travis Boudreaux. Pursuant to the Boudreaux Letter, Mr. Boudreaux will serve as the Company's Director of Software Engineering on an at-will basis. The Boudreaux Letter provides that Mr. Boudreaux will receive a base salary of $150,000 per year and will be eligible for a discretionary annual cash bonus with a target bonus opportunity equal to 60% of his base salary, based upon the attainment of performance metrics to be established, and as determined, by the Board.

Mr. Boudreaux will also be entitled to receive a stock option to purchase 50,000 shares of common stock under the Incentive Plan. Such award will be subject to the terms of the Incentive Plan and will vest in three (3) equal installments over a three-year service period following the grant date. Mr. Boudreaux will also be able to participate in all benefit plans, practices and programs maintained by the Company.

The foregoing description of the Boudreaux Letter does not purport to be complete and is qualified in its entirety by the terms and conditions of the Boudreaux Letter, which is attached hereto as Exhibit 10.11 and is incorporated herein by reference.

Manuel Rivero

On November 15, 2018, the Company entered into an offer letter (the "Rivero Letter") with Manuel Rivero. Pursuant to the Rivero Letter, Mr. Rivero will serve as the Company's Chief Architect on an at-will basis. The Rivero Letter provides that Mr. Rivero will receive a base salary of $150,000 per year and will be eligible for a discretionary annual cash bonus with a target bonus opportunity equal to 60% of his base salary, based upon the attainment of performance metrics to be established, and as determined, by the Board.

Mr. Rivero will also be entitled to receive a stock option to purchase 50,000 shares of common stock under the Incentive Plan. Such award will be subject to the terms of the Incentive Plan and will vest in three (3) equal installments over a three-year service period following the grant date. Mr. Rivero will also be able to participate in all benefit plans, practices and programs maintained by the Company.

The foregoing description of the Rivero Letter does not purport to be complete and is qualified in its entirety by the terms and conditions of the Rivero Letter, which is attached hereto as Exhibit 10.12 and is incorporated herein by reference.

David Pringle

On November 15, 2018, the Company entered into an offer letter (the "Pringle Letter") with David Pringle. Pursuant to the Pringle Letter, Mr. Pringle will serve as the Company's Chief Financial Officer on an at-will basis. The Pringle Letter provides that Mr. Pringle will receive a base salary of $310,000 per year and will be eligible for a discretionary annual cash bonus with a target bonus opportunity equal to 50% of his base salary, based upon the attainment of performance metrics to be established, and as determined, by the Board. Mr. Pringle will also be entitled to receive an equity award under the Incentive Plan with a grant date value equal to approximately $840,400, based on the closing price per share of common stock on the grant date. Fifty percent (50%) of such award will be in the form of a stock option to purchase shares of common stock and fifty percent (50%) of such award will be in the form of restricted shares of common stock and will be subject to the terms of the Incentive Plan and a written award agreement. Mr. Pringle will also be able to participate in all benefit plans, practices and programs maintained by the Company.

The foregoing description of the Pringle Letter does not purport to be complete and is qualified in its entirety by the terms and conditions of the Pringle Letter, which is attached hereto as Exhibit 10.13 and is incorporated herein by reference.

Joseph Stough

On November 15, 2018, the Company entered into an offer letter (the "Stough Letter") with Joseph Stough. Pursuant to the Stough Letter, Mr. Stough will serve as the Company's President and Chief Operating Officer on an at-will basis. The Stough Letter provides that Mr. Stough will receive a base salary of $325,000 per year and will be eligible for a discretionary annual cash bonus with a target bonus opportunity equal to 50% of his base salary, based upon the attainment of performance metrics to be established, and as determined, by the Board. Mr. Stough will also be entitled to receive an equity award under the Incentive Plan with a grant date value equal to approximately $860,000, based on the closing price per share of common stock on the grant date. Fifty percent (50%) of such award will be in the form of a stock option to purchase shares of common stock and fifty percent (50%) of such award will be in the form of restricted shares of common stock and will be subject to the terms of the Incentive Plan and a written award agreement. Mr. Stough will also be able to participate in all benefit plans, practices and programs maintained by the Company.

The foregoing description of the Stough Letter does not purport to be complete and is qualified in its entirety by the terms and conditions of the Stough Letter, which is attached hereto as Exhibit 10.14 and is incorporated herein by reference.

Sonny Mayugba

On November 15, 2018, the Company entered into an offer letter (the "Mayugba Letter") with Sonny Mayugba. Pursuant to the Mayugba Letter, Mr. Mayugba will serve as the Company's Chief Marketing Officer on an at-will basis. The Mayugba Letter provides that Mr. Mayugba will receive a base salary of $261,000 per year and will be eligible for a discretionary annual cash bonus with a target bonus opportunity equal to 50% of his base salary, based upon the attainment of performance metrics to be established, and as determined, by the Board. Mr. Mayugba will also be entitled to receive an equity award under the Incentive Plan with a grant date value equal to approximately $450,000, based on the closing price per share of common stock on the grant date. Fifty percent (50%) of such award will be in the form of a stock option to purchase shares of common stock and fifty percent (50%) of such award will be in the form of restricted shares of common stock and will be subject to the terms of the Incentive Plan and a written award agreement. Mr. Mayugba will also be able to participate in all benefit plans, practices and programs maintained by the Company.

The foregoing description of the Mayugba Letter does not purport to be complete and is qualified in its entirety by the terms and conditions of the Mayugba Letter, which is attached hereto as Exhibit 10.15 and is incorporated herein by reference.

Addison Killebrew

On November 15, 2018, the Company entered into an offer letter (the "Killebrew Letter") with Addison Killebrew. Pursuant to the Killebrew Letter, Mr. Killebrew will serve as the Company's Chief Innovation Officer on an at-will basis. The Killebrew Letter provides that Mr. Killebrew will receive a base salary of $205,000 per year and will be eligible for a discretionary annual cash bonus with a target bonus opportunity equal to 45% of his base salary, based upon the attainment of performance metrics to be established, and as determined, by the Board. Mr. Killebrew will also be entitled to receive an equity award under the Incentive Plan with a grant date value equal to approximately $400,000, based on the closing price per share of common stock on the grant date. Fifty percent (50%) of such award will be in the form of a stock option to purchase shares of common stock and fifty percent (50%) of such award will be in the form of restricted shares of common stock and will be subject to the terms of the Incentive Plan and a written award agreement. Mr. Killebrew will also be able to participate in all benefit plans, practices and programs maintained by the Company.

The foregoing description of the Killebrew Letter does not purport to be complete and is qualified in its entirety by the terms and conditions of the Killebrew Letter, which is attached hereto as Exhibit 10.16 and is incorporated herein by reference.

Consulting Agreements

At the Closing, each of Steven L. Scheinthal and Richard H. Liem (each, a "consultant") entered into a consulting agreement with the Company (the "Consulting Agreements") with a term of one year. Pursuant to the Consulting Agreements, each consultant will, at the direction of the Board or Chief Executive Officer, provide expertise, advice and assistance on such projects as reasonably requested, not to exceed 15 hours per month. In consideration of such services, the Consulting Agreements provide that each consultant will receive 150,000 restricted shares of common stock under the Incentive Plan, which will vest after one year, subject to the consultant's continued provision of services through such date, unless the Consulting Agreement is earlier terminated due to the consultant's death or disability, in which case the restricted shares will vest as of the date of such termination. Each Consulting Agreement may be terminated by the applicable consultant for any or no reason upon no less than 30 days' written notice to the Company or by the Company for cause upon written notice to the applicable consultant.

The foregoing description of the Consulting Agreements does not purport to be complete and is qualified in its entirety by the full text of the Consulting Agreements, copies of which are attached hereto as Exhibits 10.17 and 10.18, respectively, and are incorporated herein by reference.

Lock-up Agreements

At the Closing, the Company and certain holders of Waitr's securities prior to the Business Combination ("Waitr securityholders") entered into lock-up agreements (the "Lock-up Agreements"), pursuant to which the shares of common stock issued to Waitr securityholders at the Closing are subject to a lock-up period beginning on the date of the Closing and expiring one year after the date of the Closing or earlier if, subsequent to the Closing, (i) the last sale price of the common stock equals or exceeds $12.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within any 30 trading day period commencing at least 150 days after the Closing or (ii) the Company consummates a subsequent liquidation, merger, stock exchange or other similar transaction that results in all of the Company's stockholders having the right to exchange their shares of common stock for cash, securities or other property.

The foregoing description of the Lock-up Agreements does not purport to be complete and is qualified in its entirety by the full text of the Lock-up Agreements, a form of which is attached hereto as Exhibit 10.19 and is incorporated herein by reference.

Indemnification Agreements

In connection with the Closing, the Company expects to enter into indemnification agreements with each of its directors and executive officers. Each indemnification agreement provides for indemnification and advancements by the Company of certain expenses and costs relating to claims, suits or proceedings arising from his service to the Company or, at the Company's request, service to other entities, as officers or directors to the maximum extent permitted by applicable law.

The foregoing description of the indemnification agreements does not purport to be complete and is qualified in its entirety by the full text of the indemnification agreements, a form of which is attached hereto as Exhibit 10.20 and is incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The disclosure set forth in the "Introductory Note" above is incorporated into this Item 2.01 by reference. On November 15, 2018, the Business Combination was approved by the stockholders of Landcadia at the special meeting of stockholders (the "Special Meeting"). The Business Combination was completed on November 15, 2018.

The aggregate consideration for the Business Combination was $300,000,000, consisting of (i) approximately $71.7 million in cash and (ii) 22,831,697 shares of common stock valued at $10.00 per share. In addition, an aggregate of 559,507 of the Company's stock options were issued to holders of options to purchase Waitr shares that were unvested, outstanding and unexercised as of immediately prior to the effective time of the Business Combination.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

The Company makes and incorporates by reference forward-looking statements in this Current Report on Form 8-K. These forward-looking statements relate to expectations for future financial performance, business strategies or expectations for the Company's business. Specifically, forward-looking statements may include statements relating to:

- the benefits of the Business Combination;
- the future financial performance of the post-combination company following the Business Combination;
- expansion plans and opportunities; and
- other statements preceded by, followed by or that include the words "may," "can," "should," "will," "estimate," "plan," "project," "forecast," "intend," "expect," "anticipate," "believe," "seek," "target" or similar expressions.

These forward-looking statements are based on information available as of the date of this Current Report on Form 8-K and the Company's management's current expectations, forecasts and assumptions, and involve a number of judgments, risks and uncertainties. Accordingly, forward-looking statements should not be relied upon as representing the Company's views as of any subsequent date. The Company does not undertake any obligation to update forward-looking statements to reflect events or circumstances after the date they were made, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

As a result of a number of known and unknown risks and uncertainties, the Company's actual results or performance may be materially different from those expressed or implied by these forward-looking statements. Some factors that could cause actual results to differ include:

- the risk that the Business Combination disrupts current plans and operations;

- the ability to recognize the anticipated benefits of the Business Combination, which may be affected by, among other things, competition and the ability of the combined business to grow and manage growth profitably;
- costs related to the Business Combination;
- changes in applicable laws or regulations;
- the possibility that the Company may be adversely affected by other economic, business, and/or competitive factors; and
- other risks and uncertainties indicated or incorporated by reference in this Current Report on Form 8-K, including those set forth in the "Risk Factors" section in Landcadia's definitive proxy statement filed with the U.S. Securities and Exchange Commission (the "SEC") on November 1, 2018 (the "Proxy Statement") relating to the Special Meeting, which is incorporated herein by reference.

Business

The business of Landcadia prior to the Business Combination is described in the Proxy Statement in the section entitled "Information About the Company," which is incorporated by reference herein. The business of Waitr prior to the Business Combination is described in in the Proxy Statement in the section entitled "Information About Waitr," which is incorporated herein by reference.

Risk Factors

The risk factors related to the Company's business and operations and the Business Combination are set forth in the Proxy Statement in the section entitled "Risk Factors," which is incorporated herein by reference.

Properties

The properties of the Company are described in the Proxy Statement in the section entitled "Information About Waitr – Facilities," which is incorporated herein by reference.

Unaudited Pro Forma Condensed Financial Information

The information set forth in Exhibit 99.2 to this Current Report on Form 8-K is incorporated herein by reference.

Management's Discussion and Analysis of Financial Condition and Operations

The information set forth in Exhibit 99.3 to this Current Report on Form 8-K is incorporated herein by reference.

Quantitative and Qualitative Disclosure about Market Risk

The information set forth in Exhibit 99.3 to this Current Report on Form 8-K is incorporated herein by reference.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information known to the Company regarding beneficial ownership of common stock as of November 21, 2018 by:

- each person known by the Company to be the beneficial owner of more than 5% of outstanding common stock;
- each of the Company's executive officers and directors; and
- all executive officers and directors of the Company as a group.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days. Share of common stock issuable upon exercise of options or warrants currently exercisable or exercisable within 60 days are deemed outstanding solely for purposes of calculating the percentage of class and percentage of total voting power of the beneficial owner thereof.

The beneficial ownership of the common stock of the Company is based on 54,585,538 shares of common stock issued and outstanding as of November 21, 2018.

Unless otherwise indicated, the Company believes that each person named in the table below has sole voting and investment power with respect to all shares of common stock beneficially owned by him.

Directors and Officers[1]	**Number of Shares Beneficially Owned**	**Percentage of Outstanding Shares**
Christopher Meaux[2]	4,987,044	9.1%
David Pringle	355,020	*
Joseph Stough[3]	854,862	1.6%
Travis Boudreaux	227,024	*
Addison Killebrew	228,340	*
Sonny Mayugba	291,026	*
Karl Meche[4]	26,912	*
Manuel Rivero	651,678	1.2%
Tilman J. Fertitta[5]	4,000,000	7.3%
Scott Fletcher	-	-
Jonathan Green[6]	3,059,569	5.3%
Joseph LeBlanc	126,386	*
Steven L. Scheinthal	150,000	*
William Gray Stream[7]	1,305,556	2.4%
All Executive Officers and Directors as a Group (14 individuals)	16,263,417	28.2
Greater than 5% Stockholders		
Fertitta Entertainment, Inc.[5]	4,000,000	7.3%
Jefferies Financial Group Inc.[8]	4,852,842	8.8%
Meaux Enterprises, LLC[2]	4,987,044	9.1%
Luxor Capital Group, LP[6]	6,178,326	10.2%

* Less than 1%.

(1) This information is based on 54,585,538 shares of common stock outstanding at November 21, 2018. Except as described in the footnotes below and subject to applicable community property laws and similar laws, the Company believes that each person listed above has sole voting and investment power with respect to such shares. Unless otherwise indicated, the business address of each of the entities, directors and executives in this table is 844 Ryan Street, Suite 300, Lake Charles, Louisiana 70601.

(2) Interests shown include 3,843,708 shares held by Meaux Enterprises, LLC (“Meaux LLC”). Mr. Meaux has voting and dispositive control over the shares held by Meaux LLC. Any shares issued to Mr. Meaux personally in connection with the Merger Agreement are expected to be transferred as soon as practicable following Closing to Meaux LLC, and all holdings by Meaux LLC and Mr. Meaux have been consolidated for purposes of this table.

(3) Interests shown include 24,768 shares held by Stough Family Trust and 12,383 shares held by Jolie Ann Stough Trust (together, the “Stough Trusts”) for the benefit of Mr. Stough’s children. Mr. Stough disclaims beneficial ownership of the shares held by the Stough Trusts except to the extent of his respective pecuniary interests therein.

(4) Interests shown consist of options to purchase common stock granted on October 1, 2018. 25% of such options will vest one year from the grant date, with 1/48 vesting on a monthly basis thereafter.

(5) Interests shown are held directly by FEI. Tilman J. Fertitta owns and controls FEI and has voting and dispositive control over the shares held by FEI.

(6) The interests held by Luxor Capital Group, LP ("Luxor Capital") include (i) 150,000 shares of common stock, (ii) 1,028,325 shares of common stock issuable upon exercise of public warrants held by investment funds affiliated with Luxor Capital (the "Luxor Funds"), (iii) 384,615 shares of common stock issuable upon exercise of warrants held by the Luxor Funds, and (iv) 4,615,386 shares of common stock issuable upon conversion of the Notes held by the Luxor Funds. Luxor Capital may be deemed to beneficially own the shares held by each of the Luxor Funds. In addition, Jonathan Green, as a managing member and controlling person of the general partner of one of the Luxor Funds, may be deemed to beneficially own (i) 54,109 shares of common stock held by such fund, (ii) 374,291 shares of common stock issuable upon conversion of public warrants held by such fund, (iii) 202,400 shares of common stock issuable upon conversion of Debt Warrants held by such fund and (iv) 2,428,769 shares of common stock issuable upon conversion of the Notes held by such fund. The Luxor Funds will not have the right to convert Notes to the extent that after giving effect to such conversion, Luxor Capital would beneficially own in excess of 9.99% of the shares of common stock outstanding immediately after giving effect to such conversion. Christian Leone, as a controlling person of Luxor Capital, may be deemed a beneficial owner of all the shares to be owned by Luxor Capital, and Jonathan Green, as a controlling person of the general partner of one of the Luxor Funds, may be deemed the beneficial owner of the shares to be owned by such fund. Mr. Leone and Mr. Green disclaim beneficial ownership except to the extent of their respective pecuniary interests therein. The business address of Luxor, Mr. Leone and Mr. Green is 1114 Avenue of the Americas, 28th Floor, New York, NY 10036.

(7) Interests shown include (i) 509,324 shares held by Stream Investment Holdings, LLC ("SIH"), (ii) 9,169 shares held by Stream Financial Services, LLC ("SFS"), (iii) 97,794 shares held by Sierra Pelican ("Sierra") and (iv) 617,049 shares held by Mithras, LLC ("Mithras"). Mr. Stream has voting and dispositive control over the shares held by each of SIH, SFS, Sierra and Mithras, and therefore may be deemed a beneficial owner of the shares held by such entities. Mr. Stream disclaims beneficial ownership of the shares held by such entities except to the extent of his pecuniary interest therein.

(8) Based solely on a Schedule 13D/A filed on November 19, 2018 by Jefferies Financial Group Inc. (f/k/a Leucadia National Corporation), on behalf of itself and its controlled subsidiaries, the interests shown include (i) 638,561 shares of common stock and (ii) 319,281 shares issuable upon conversion of public warrants.

Directors and Officers

Biographical information with respect to the Company's directors and executive officers immediately after the Closing is set forth in the Proxy Statement in the section entitled "Management After the Business Combination," which is incorporated herein by reference.

In connection with and effective upon the consummation of the Business Combination, each of Landcadia's officers and directors resigned.

The size of the Board was increased to seven members effective upon the Closing. At the Special Meeting, each of Joseph LeBlanc and Steven L. Scheinthal were elected by the Company's stockholders to serve as Class I directors effective upon the Closing with terms expiring at the Company's 2019 annual meeting of stockholders; each of Scott Fletcher and William Gray Stream were elected by the Company's stockholders to serve as Class II directors effective upon the Closing with terms expiring at the Company's 2020 annual meeting of stockholders; and Christopher Meaux, Tilman J. Fertitta and Jonathan Green were elected by the Company's stockholders to serve as Class III directors effective upon the Closing with terms expiring at the Company's 2021 annual meeting of stockholders.

Director Independence

The listing standards of the Nasdaq Stock Market ("Nasdaq") require that a majority of the Board be independent. An "independent director" is defined generally as a person other than an officer or employee of a company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors of such company, would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director.

Messrs. Fertitta, Fletcher, LeBlanc and Stream, being a majority of the directors on the Board, have been determined to be independent by the Board pursuant to the rules of Nasdaq.

Committees of the Board of Directors

Following the Closing, the standing committees of the Board consist of an audit committee (the "Audit Committee"), a compensation committee (the "Compensation Committee"), and a corporate governance and nominating committee (the "Corporate Governance and Nominating Committee"). Each of the committees reports to Board.

The composition, duties and responsibilities of these committees are set forth below.

Audit Committee

The Audit Committee is responsible for, among other things, (i) appointing, retaining and evaluating the Company's independent registered public accounting firm and approving all services to be performed by them; (ii) overseeing the Company's independent registered public accounting firm's qualifications, independence and performance; (ii) overseeing the financial reporting process and discussing with management and the Company's independent registered public accounting firm the interim and annual financial statements that the Company files with the SEC; (iv) reviewing and monitoring the Company's accounting principles, accounting policies, financial and accounting controls and compliance with legal and regulatory requirements; (v) establishing procedures for the confidential anonymous submission of concerns regarding questionable accounting, internal controls or auditing matters; and (vi) reviewing and approving related person transactions.

Effective upon the Closing, the Board appointed Messrs. Stream, Fletcher and LeBlanc as members of the Audit Committee. All members of the Audit Committee are independent within the meaning of the federal securities laws and the meaning of the Nasdaq Rules. Each member of the Audit Committee meets the requirements for financial literacy under the applicable rules and regulations of the SEC and Nasdaq, and the Board has determined that Mr. Stream is an "audit committee financial expert," as that term is defined by the applicable rules of the SEC. The Board has approved a written charter under which the Audit Committee operates. A copy of the charter is available on the Company's website.

Compensation Committee

The Compensation Committee is responsible for, among other things, (i) reviewing key employee compensation goals, policies, plans and programs; (ii) reviewing and approving the compensation of the Company's directors, chief executive officer and other executive officers; (iii) reviewing and approving employment agreements and other similar arrangements between the Company and the Company's executive officers; and (iv) administering the Company's stock plans and other incentive compensation plans.

Effective upon the Closing, the Board appointed Messrs. LeBlanc and Stream as members of the Compensation Committee. The Board has approved a written charter under which the Compensation Committee operates. A copy of the charter is available on the Company's website.

Corporate Governance and Nominating Committee

The Corporate Governance and Nominating Committee is responsible for, among other things, considering and making recommendations to the Board on matters relating to the selection and qualification of directors of the Company and candidates nominated to serve as directors of the Company, as well as other matters relating to the duties of directors of the Company, the operation of the Board and corporate governance.

Effective upon the Closing, the Board appointed Messrs. Stream and Fletcher as members of the Corporate Governance and Nominating Committee. The Board has approved a written charter under which the Corporate Governance and Nominating Committee operates. A copy of the charter is available on the Company's website.

Executive Compensation

The information set forth in the sections entitled "Employment Agreements" and "Offer Letters" in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

A description of the compensation of Landcadia's and Waitr's executive officers and directors before the consummation of the Business Combination is set forth in the Proxy Statement in the section entitled "Executive Compensation," which is incorporated herein by reference.

A description of the Company's executive compensation following the Closing is set forth in the Proxy Statement in the section entitled "Management After the Business Combination – Post-Combination Company Executive Compensation," which is incorporated herein by reference.

At the Special Meeting, the stockholders of the Company approved the Incentive Plan. The description of the Incentive Plan set forth in the Proxy Statement section entitled "The Incentive Plan Proposal" is incorporated herein by reference. A copy of the full text of the Incentive Plan is filed as Exhibit 10.21 to this Current Report on Form 8-K and is incorporated herein by reference. Following the consummation of the Business Combination, the Company expects that the Board or the Compensation Committee will make grants of awards under the Incentive Plan to eligible participants.

Certain Relationships and Related Transactions

The description of certain relationships and related transactions is included in the Proxy Statement in the section entitled "Certain Relationships and Related Party Transactions," which is incorporated herein by reference.

The information set forth in the sections entitled "Registration Rights Agreement," "Consulting Agreements" and "Indemnification Agreements" in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Legal Proceedings

The description of legal proceedings is included in the Proxy Statement in the section entitled "Information about Waitr – Legal Proceedings," which is incorporated herein by reference.

Market Price and Dividends on the Registrant's Common Equity and Related Stockholder Matters

In connection with the Closing, the shares of common stock and warrants began trading on Nasdaq under the symbols "WTRH" and "WTRHW," respectively. Landcadia's units automatically separated into their component securities upon consummation of the Business Combination and, as a result, no longer trade as a separate security and were delisted from Nasdaq. As of the Closing Date there were approximately 486 holders of record of common stock.

The Company has not paid any cash dividends on its common stock to date. It is the present intention of the Company to retain any earnings for use in its business operations and, accordingly, the Company does not anticipate the Board declaring any dividends in the foreseeable future.

Recent Sales of Unregistered Securities

Information about unregistered sales of the Company's equity securities is set forth under Item 3.02 of this Current Report on Form 8-K, which is incorporated herein by reference.

Description of Securities

A description of the common stock, preferred stock and warrants is included in the Proxy Statement in the section entitled "Description of Securities," which is incorporated herein by reference.

Indemnification of Directors and Officers

The Third Amended and Restated Charter (as defined below) provides that the Company's officers and directors will be indemnified by the Company to the fullest extent authorized by Delaware law, as it now exists or may in the future be amended. In addition, the Third Amended and Restated Charter provides that the Company's directors will not be personally liable for monetary damages to the Company for breaches of their fiduciary duty as directors, unless they violated their duty of loyalty to the Company or its stockholders, acted in bad faith, knowingly or intentionally violated the law, authorized unlawful payments of dividends, unlawful stock purchases or unlawful redemptions, or derived an improper personal benefit from their actions as directors. The Company intends to enter into agreements with its officers and directors to provide contractual indemnification in addition to the indemnification provided for in the Third Amended and Restated Charter. The Amended and Restated Bylaws (as defined below) also permit the Company to secure insurance on behalf of any officer, director or employee for any liability arising out of his or her actions, regardless of whether Delaware law would permit such indemnification. The Company may purchase a policy of directors' and officers' liability insurance that insures its officers and directors against the cost of defense, settlement or payment of a judgment in some circumstances and insures the Company against its obligations to indemnify its officers and directors.

The information set forth in the section entitled "Indemnification Agreements" in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Financial Statements, Supplementary Data and Exhibits

The information set forth under Item 9.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure set forth above under Item 1.01 regarding the Credit Agreement, the Notes Credit Agreement and the Notes is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K with respect to the issuance of the Notes, Debt Warrants, shares of common stock underlying the Notes and Debt Warrants and shares of common stock issuable in exchange for the private placement warrants is incorporated herein by reference. The Notes and Debt Warrants (including the shares of common stock underlying the Notes and Debt Warrants) and the shares of common equity issuable upon the exchange of the private placement warrants will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

Item 3.03. Material Modification to Rights of Security Holders.

On November 15, 2018, in connection with the consummation of the Business Combination, the Company amended and restated its second amended and restated certificate of incorporation (as so amended and restated, the "Third Amended and Restated Charter") and its amended and restated bylaws (as so amended and restated, the "Second Amended and Restated Bylaws").

Copies of the Third Amended and Restated Charter and the Second Amended and Restated Bylaws are included as Exhibits 3.1 and 3.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 4.01. Change in the Registrant's Certifying Accountant.

(a) *Dismissal of independent registered public accounting firm*

Effective upon the Closing, the Audit Committee of the Board approved the dismissal of Marcum LLP ("Marcum") as the Company's independent registered public accounting firm. The reports of Marcum on the Company's financial statements as of and for the two most recent fiscal years (ended December 31, 2017 and December 31, 2016) did not contain an adverse opinion or a disclaimer of opinion, and were not qualified or modified as to uncertainties, audit scope or accounting principles.

During the Company's two most recent fiscal years (ended December 31, 2017 and December 31, 2016) and the subsequent interim period through November 15, 2018, there were no disagreements between the Company and Marcum on any matter of accounting principles or practices, financial disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Marcum, would have caused it to make reference to the subject matter of the disagreements in its reports on the Company's financial statements for such years.

During the Company's two most recent fiscal years (ended December 31, 2017 and December 31, 2016) and the subsequent interim period through November 15, 2018, there were no "reportable events" (as defined in Item 304(a)(1)(v) of Regulation S-K under the Securities Exchange Act of 1934, as amended (the "Exchange Act")).

The Company provided Marcum with a copy of the foregoing disclosures and has requested that Marcum furnish the Company with a letter addressed to the SEC stating whether it agrees with the statements made by the Company set forth above. A copy of Marcum's letter, dated November 21, 2018, is filed as Exhibit 16.1 to this Current Report on Form 8-K.

Item 5.01 Changes in Control of Registrant.

The information set forth above in the "Introductory Note" and Item 2.01 is incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The information set forth above in the sections titled "Employment Agreement with Christopher Meaux," "Directors and Executive Officers," "Director Independence," "Committees of the Board of Directors" and "Executive Compensation" in Item 2.01 are incorporated herein by reference.

In addition, the Incentive Plan became effective upon the Closing. The material terms of the Incentive Plan are described in the Proxy Statement in the section entitled "The Incentive Plan Proposal," which is incorporated herein by reference.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The disclosure set forth in Item 3.03 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.06. Change in Shell Company Status.

As a result of the Business Combination, which fulfilled the definition of an "initial business combination" as required by Landcadia's organizational documents, the Company ceased to be a shell company upon the Closing. The material terms of the Business Combination are described in the section entitled "The Business Combination Proposal" of the Proxy Statement, and are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

The consolidated financial statements of Waitr as of December 31, 2017 and 2016 and for the years ended December 31, 2017, 2016 and 2015 and the related notes and report of independent registered public accounting firm thereto are included in the Proxy Statement and incorporated herein by reference.

The consolidated financial statements of Waitr for the nine months ended September 30, 2018 are attached hereto as Exhibit 99.1 and incorporated herein by reference.

(b) Pro Forma Financial Information.

Certain pro forma financial information of the Company is attached hereto as Exhibit 99.2 and incorporated herein by reference.

(d) Exhibits

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated as of May 16, 2018, by and between the Company, Landcadia Merger Sub Inc. and Waitr Incorporated. (incorporated by reference to Exhibit 2.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on May 17, 2018).
3.1	Third Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018).
3.2	Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018).
4.1	Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018).
4.2	Specimen Warrant Certificate (incorporated by reference to Exhibit 4.2 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018).
4.3	Warrant Agreement, dated May 25, 2016, between the Company and Continental Stock Transfer &Trust Company, as warrant agent (incorporated by reference to Exhibit 4.4 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on June 1, 2016).
4.4	Form of Warrant (incorporated by reference to Exhibit 4.3 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018).
10.1	Convertible Promissory Note, dated August 21, 2018, issued to Fertitta Entertainment, Inc. (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on August 23, 2018).
10.2	Commitment Letter, dated as of October 2, 2018, by and among the Company, Landcadia Merger Sub, Inc. and Luxor Capital Group, LP. (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on October 3, 2018).

10.3	Credit and Guaranty Agreement, dated as of November 15, 2018, by and among Waitr Inc., as Borrower, Waitr Intermediate Holdings, LLC, certain subsidiaries of Waitr Inc., as Guarantors, various lenders and Luxor Capital Group, LP, as Administrative Agent, Collateral Agent and Lead Arranger.
10.4	Pledge and Security Agreement, dated as of November 15, 2018, by and among Waitr Inc., Waitr Intermediate Holdings, LLC and certain subsidiaries of Waitr Inc., as Grantors, and Luxor Capital Group, LP, as Collateral Agent.
10.5	Credit Agreement, dated November 15, 2018, by and among the Company, as Borrower, various lenders and Luxor Capital Group, LP, as Administrative Agent and Lead Arranger.
10.6	Form of Convertible Promissory Note.
10.7	Form of Amended and Restated Registration Rights Agreement by and among the Company and the investors listed on the signature pages thereto (incorporated by reference to Exhibit 10.1 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018).
10.8	Registration Rights Agreement, dated November 15, 2018, by and among the Company and the parties listed on the signature pages thereto (incorporated by reference to Exhibit 10.2 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018).
10.9	Letter Agreement, dated November 15, 2018, by and among the Company, Luxor Capital Group, LP, Luxor Capital Partners, LP, Luxor Capital Partners Offshore Master Fund, LP, Luxor Wavefront, LP and Lugard Road Capital Master Fund, LP.
10.10	Employment Agreement, dated November 15, 2018, by and between the Company and Christopher Meaux.
10.11	Offer Letter, dated November 15, 2018, by and between the Company and Travis Boudreaux.
10.12	Offer Letter, dated November 15, 2018, by and between the Company and Manuel Rivero.
10.13	Offer Letter, dated November 15, 2018, by and between the Company and David Pringle.
10.14	Offer Letter, dated November 15, 2018, by and between the Company and Joseph Stough.
10.15	Offer Letter, dated November 15, 2018, by and between the Company and Sonny Mayugba.
10.16	Offer Letter, dated November 15, 2018, by and between the Company and Addison Killebrew.
10.17	Consulting Agreement, dated November 15, 2018, by and between the Company and Steven L. Scheinthal.
10.18	Consulting Agreement, dated November 15, 2018, by and between the Company and Richard H. Liem.
10.19	Form of Lockup Agreement.
10.20	Form of Indemnification Agreement.
10.21	Waitr Holdings Inc. 2018 Omnibus Incentive Plan.
10.22	Letter Agreement, dated May 25, 2016, by and among the Company, Tilman J. Fertitta, Richard Handler, Richard H. Liem, Steven L. Scheinthal, Nicholas Daraviras, Jefferies Financial Group Inc. (f/k/a Leucadia National Corporation) and Fertitta Entertainment, Inc. (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-37788) filed by the Company on June 1, 2016).
10.23	Letter Agreement, dated May 25, 2016, by and among the Company and Mark Kelly (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 001-37788) filed by the Company on June 1, 2016).
10.24	Letter Agreement, dated August 23, 2016, by and between the Company and G. Michael Stevens (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 001-37788) filed by the Company on August 23, 2016).
10.25	Letter Agreement, dated May 8, 2017, by and between the Company and Michael S. Chadwick (incorporated by reference to Exhibit 10.2 to Current Report on Form 8-K (File No. 001-37788) filed by the Company on May 10, 2017).
10.26	Amendment to Letter Agreement, dated as of May 31, 2018, by and among the Company, Jefferies Financial Group Inc., Fertitta Entertainment, Inc., Tilman J. Fertitta, Richard Handler, Richard H. Liem, Steven L. Scheinthal and Nicholas Daraviras (incorporated by reference to Exhibit 10.3 to Current Report on Form 8-K (File No. 001-37788) filed by the Company on June 1, 2018).
10.27	Amendment to Letter Agreement, dated as of May 31, 2018, by and between the Company and Mark Kelly (incorporated by reference to Exhibit 10.4 to Current Report on Form 8-K (File No. 001-37788) filed by the Company on June 1, 2018).
10.28	Amendment to Letter Agreement, dated as of June 11, 2018, by and between the Company and G. Michael Stevens (incorporated by reference to Exhibit 10.5 to Quarterly Report on Form 10-Q (File No. 001-37788) filed by the Company on August 9, 2018).
10.29	Amendment to Letter Agreement, dated as of June 11, 2018, by and between the Company and Michael S. Chadwick (incorporated by reference to Exhibit 10.6 to Quarterly Report on Form 10-Q (File No. 001-37788) filed by the Company on August 9, 2018).
16.1	Letter from Marcum LLP to the SEC, dated November 21, 2018.
21.1	Subsidiaries of the Registrant.
99.1	Financial Statements of Waitr for the nine months ended September 30, 2018 and 2017.
99.2	Unaudited Pro Forma Condensed Financial Information of Landcadia at September 30, 2018 and December 31, 2017 and for the nine months ended September 30, 2018.
99.3	Management’s Discussion and Analysis of Financial Condition and Operations.

SIGNATURE

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

WAITR HOLDINGS INC.

By: /s/ David Pringle
Name: David Pringle
Title: Chief Financial Officer and Secretary

Dated: November 21, 2018

Exhibit 10.3

EXECUTION VERSION

CREDIT AND GUARANTY AGREEMENT

dated as of November 15, 2018

among

WAITR INC.,
as Borrower

WAITR INTERMEDIATE HOLDINGS, LLC
as Holdings

CERTAIN SUBSIDIARIES OF WAITR INC.,
as Guarantors,

VARIOUS LENDERS,

and

LUXOR CAPITAL GROUP, LP
as Administrative Agent, Collateral Agent, and Lead Arranger

$25,000,000 Senior Secured Credit Facilities

TABLE OF CONTENTS

CREDIT AND GUARANTY AGREEMENT

This **CREDIT AND GUARANTY AGREEMENT**, dated as of November 15, 2018, is entered into by and among **WAITR INC.**, a Delaware corporation ("**Borrower**"), **WAITR INTERMEDIATE HOLDINGS, LLC**, a Delaware limited liability company ("**Holdings**") and **CERTAIN SUBSIDIARIES OF BORROWER**, as Guarantors, the **LENDERS** party hereto from time to time, and **LUXOR CAPITAL GROUP, LP** ("**Luxor Capital**"), as Administrative Agent (in such capacity, "**Administrative Agent**"), Collateral Agent (in such capacity, "**Collateral Agent**") and Lead Arranger.

RECITALS:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, Lenders have agreed to extend a Term Loan to Borrower, in an aggregate principal amount not to exceed $25,000,000, the proceeds of which will be used (i) to fund a portion of the consideration and to pay fees and expenses in connection with the closing of the Merger and (ii) to finance the working capital needs and other general corporate purposes of the Borrower (including for Permitted Acquisitions);

WHEREAS, Borrower has agreed to secure all of its Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on substantially all of its assets, including a pledge of all of the Capital Stock of each of its Domestic Subsidiaries and 65% of all the Capital Stock of each of its Foreign Subsidiaries; and

WHEREAS, Guarantors have agreed to guarantee the obligations of Borrower hereunder and to secure their respective Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on substantially all of their respective assets, including a pledge of all of the Capital Stock of each of their respective Domestic Subsidiaries (including Borrower) and 65% of all the Capital Stock of each of their respective Foreign Subsidiaries.

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

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1. Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"**Accounts**" means all "**accounts**" (as defined in the UCC) of Borrower (or, if referring to another Person, of such Person), including, without limitation, accounts, accounts receivable, monies due or to become due and obligations in any form (whether arising in connection with contracts, contract rights, instruments, general intangibles, or chattel paper), in each case whether arising out of goods sold or services rendered or from any other transaction and whether or not earned by performance, now or hereafter in existence, and all documents of title or other documents representing any of the foregoing, and all collateral security and guaranties of any kind, now or hereafter in existence, given by any Person with respect to any of the foregoing.

"**Administrative Agent**" as defined in the preamble hereto.

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Holdings or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of Holdings or any of its Subsidiaries, threatened in writing against Holdings or any of its Subsidiaries or any property of Holdings or any of its Subsidiaries.

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means 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.

"**Agent**" means each of Administrative Agent and Collateral Agent.

"**Aggregate Amounts Due**" as defined in Section 2.12.

"**Aggregate Payments**" as defined in Section 7.2.

"**Agreement**" means this Credit and Guaranty Agreement, dated as of the date first set forth above, as it may be amended, supplemented or otherwise modified from time to time.

"**Anti-Corruption Laws**" as defined in Section 4.28(c).

"**Asset Sale**" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer, license or other disposition to, or any exchange of property with, any Person (other than to or with a Credit Party which is not Holdings), in one transaction or a series of transactions, of all or any part of any Credit Party's businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Capital Stock of any Credit Party, other than inventory (or other assets) sold, licensed or leased in the ordinary course of business. For purposes of clarification, "Asset Sale" shall include (x) the sale or other disposition for value of any contracts or (y) the early termination or modification of any contract resulting in the receipt by any Credit Party of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification).

"**Asset Sale Reinvestment Amounts**" has the meaning given to such term in Section 2.9(a).

"**Assignment Agreement**" means an Assignment and Assumption Agreement substantially in the form of Exhibit D, with such amendments or modifications as may be approved by Administrative Agent.

"**Authorized Officer**" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its vice presidents (or the equivalent thereof), and such Person's chief financial officer or treasurer.

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

"**Bail-In Legislation**" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Beneficiary**" means each Agent, Lender and Lender Counterparty.

"**Benefit Plan**" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Internal Revenue Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such "employee benefit plan" or "plan".

"**Borrower**" as defined in the preamble hereto.

"**Business Day**" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person (i) as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person or (ii) as lessee which is a transaction of a type commonly known as a "synthetic lease" (i.e., a transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for Federal income tax purposes).

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

"**Cash**" means money, currency or a credit balance in any demand or deposit account; provided, however, that notwithstanding anything to the contrary contained herein, for purposes of calculating compliance with the requirements of Sections 3 and 6 hereof "Cash" shall exclude any amounts that would not be considered "cash" under GAAP.

"**Cash Equivalents**" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator), and (b) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (v) shares of any money market mutual fund that (a) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than $500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's.

"**Change of Control**" means the earliest to occur of:

(a) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act), including any group acting for the purpose of acquiring, holding or disposing of Securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act, but excluding any employee benefit plan and/or Person acting as the trustee, agent or other fiduciary or administrator therefor), other than one or more Permitted Holders, of Capital Stock representing more than the greater of (x) 35% of the total voting power of all of the outstanding voting stock of Parent and (y) the percentage of the total voting power of all the outstanding voting stock of Parent owned, directly or indirectly, by the Permitted Holders;

(b) Parent ceasing to beneficially own 100% on a fully diluted basis of the economic and voting interest in the Capital Stock of Holdings; or

(c) Holdings ceasing to beneficially own 100% on a fully diluted basis of the economic and voting interest in the Capital Stock of Borrower.

"**Change of Law**" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement, or (c) compliance by any Lender 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 (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and 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 of Law, regardless of the date enacted, adopted or issued but solely to the extent the relevant increased costs or loss of yield would have been included if they had been imposed under applicable increased cost provisions and only to the extent the applicable Lender is requiring reimbursement therefor from similarly situated borrowers under comparable credit facilities (to the extent such Lender has the right to do so under its credit facilities with similarly situated borrowers).

"**Closing Date**" means November 15, 2018.

"**Collateral**" means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

"**Collateral Agent**" as defined in the preamble hereto.

"**Collateral Documents**" means the Pledge and Security Agreement, the Intellectual Property Security Agreements, the Mortgages, if any, the Landlord Collateral Access Agreements, if any, and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

"**Commitment**" means any Term Loan Commitment.

"**Commitment Letter**" means that certain letter agreement and the term sheet attached thereto, dated as of October 2, 2018, by and among Luxor Capital, Parent and Borrower.

"**Compliance Certificate**" means a Compliance Certificate substantially in the form of Exhibit C.

"**Consolidated Liquidity**" means, for any date an amount determined for Borrower and its Subsidiaries on a consolidated basis equal to the sum of (i) unrestricted Cash of Borrower and its Subsidiaries on hand, plus (ii) unused availability under any revolving credit facilities of Borrower and its Subsidiaries.

"**Contractual Obligation**" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"**Contributing Guarantors**" as defined in Section 7.2.

"**Control Agreement**" means, with respect to any deposit account, securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to Collateral Agent, among Collateral Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried (if applicable, any holder of any other Lien, or any representative therefor) and the Credit Party maintaining such account or owning such entitlement or contract, effective to grant "control" (within the meaning of Articles 8 and 9 under the applicable UCC) over such account to Collateral Agent (and, if applicable, such holder or representative).

"**Copyrights**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any requirement of Law in or relating to copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordations thereof and all applications in connection therewith.

"**Credit Document**" means any of this Agreement, the Notes, if any, the Collateral Documents and the Fee Letter, and any other document or instrument designated by Borrower and the Administrative Agent as a "Credit Document".

"**Credit Extension**" means the making of a Term Loan.

"**Credit Party**" means the Borrower, Holdings and each Guarantor.

"**Currency Agreement**" means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with Holdings' and its Subsidiaries' operations and not for speculative purposes.

"**Default**" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"**Default Rate**" means any interest payable pursuant to Section 2.6.

"**Division/Series Transaction**" means, with respect to the Credit Parties and their Subsidiaries, that any such Person (a) divides into two or more Persons (whether or not the original Credit Party or Subsidiary thereof survives such division) or (b) creates, or reorganizes into, one or more series, in each case as contemplated under the laws of any jurisdiction.

"**Dollars**" and the sign "**$**" mean the lawful money of the United States of America.

"**Domestic Subsidiary**" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"**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 delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means (a) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an "**accredited investor**" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans as one of its businesses, and (c) any other Person (other than a natural Person) approved by Administrative Agent.

"**Employee Benefit Plan**" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates.

"**Environmental Claim**" means any investigation, notice, notice of violation, claim, citation, complaint, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material, including the Release, cleanup, remediation, or abatement of, exposure to, or corrective or response action associated with any Hazardous Material; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all applicable foreign or domestic, federal or state (or any subdivision of either of them) laws, including the common law, statutes, ordinances, orders, rules, regulations, directives, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) the environment; (ii) the generation, use, storage, transportation, handling, Release, remediation, abatement, cleanup, or disposal of Hazardous Materials; or (iii) human safety and health, industrial hygiene, or the protection of natural resources.

"**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, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member.

"**ERISA Event**" means (i) a "**reportable event**" within the meaning of Section 4043(c) of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Holdings, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could give rise to the imposition on Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) of ERISA with respect to any Pension Plan.

"**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**" means each of the conditions or events set forth in Section 8.1.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"**Existing Indebtedness**" means Indebtedness and other obligations outstanding under (a) that certain Loan Agreement dated as of July 2, 2018 between Target and Stream Financial Services, LLC and the other Lenders (as defined therein) set forth on Schedule I thereto, as amended prior to the Closing Date, (b) the $1,500,000 convertible loan made to Parent by Fertitta Entertainment, Inc. and (c) the Waitr Convertible Notes (as defined in the Merger Agreement) to the extent the holders thereof elect to become Waitr Cashing Out Convertible Notes (as defined in the Merger Agreement).

"Facility Termination Date" means the date on which the Term Loan and all other Obligations under the Credit Documents that Administrative Agent has theretofore been notified in writing by the holder of such Obligation are then due and payable have been indefeasibly paid in Cash and satisfied in full (excluding contingent Obligations as to which no claim has been asserted).

"**Fair Share Contribution Amount**" as defined in Section 7.2.

"**Fair Share**" as defined in Section 7.2.

"**FATCA**" means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Internal Revenue Code.

"**FCPA**" as defined in Section 4.28(c).

"**Fee Letter**" means the fee letter agreement dated November 15, 2018 between Borrower and Administrative Agent, as may be amended from time to time.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of Holdings that such financial statements fairly present, in all material respects, the financial condition of Parent and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"**Financial Plan**" as defined in Section 5.1(i).

"**First Priority**" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien.

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of Parent and its Subsidiaries ending on December 31 of each calendar year.

"**Flood Hazard Property**" means any Real Estate Asset subject to a mortgage in favor of Collateral Agent, for the benefit of the Secured Parties, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Funding Date**" means the date on which the Term Loan is made.

"**Funding Guarantors**" as defined in Section 7.2.

"**Funding Notice**" means a notice substantially in the form of Exhibit A.

"**GAAP**" means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"**Governmental Authority**" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, exemption, consent order or consent decree of or from any Governmental Authority.

"**Grantor**" as defined in the Pledge and Security Agreement.

"**Guaranteed Obligations**" as defined in Section 7.1.

"**Guarantor**" means each of Holdings and each Domestic Subsidiary of Holdings (other than Borrower).

"**Guarantor Subsidiary**" means each Guarantor other than Holdings.

"**Guaranty**" means the guaranty of each Guarantor set forth in Section 7.

"**Hazardous Materials**" means any chemical, material, substance, or waste that (i) is defined, classified, or identified as hazardous or toxic or as a pollutant or contaminant under Environmental Law, including any petroleum or any fraction thereof, asbestos or asbestos containing material, polychlorinated biphenyls, lead-based paint, and radon; (ii) that is otherwise regulated by or for which standards of care exist or liability may be imposed under Environmental Law; or (iii) exposure to which is prohibited, limited, or regulated by any Governmental Authority.

"**Highest Lawful Rate**" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"**Historical Financial Statements**" means as of the Closing Date, (i) the audited financial statements of Target and its Subsidiaries, for the Fiscal Year ended December 31, 2017, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Year, and (ii) for the interim period from December 31, 2017 to June 30, 2018, unaudited financial statements of Target and its Subsidiaries, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for such interim period, in the case of clauses (i) and (ii), certified by the chief financial officer of Target that they fairly present, in all material respects, the financial condition of Target and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, if applicable, to changes resulting from audit and normal year-end adjustments.

"**Holdings**" as defined in the preamble hereto.

"**Increased-Cost Lenders**" as defined in Section 2.16.

"**Indebtedness**" as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA and trade payables not more than 90 days past due); (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co making, discounting with recourse or sale with recourse by such Person of the obligation of another; (viii) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (ix) any liability of such Person for an obligation otherwise constituting Indebtedness of another Person through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (ix), the primary purpose or intent thereof is as described in clause (viii) above; and (x) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including, without limitation, any Interest Rate Agreement and Currency Agreement, whether entered into for hedging or speculative purposes.

"**Intellectual Property**" means all rights, title and interests in or relating to (a) intellectual property and industrial property arising under any requirement of law, including all Copyrights, Patents, Software, Trademarks, Internet Domain Names, Trade Secrets, (b) all IP Ancillary Rights relating thereto and (c) IP Licenses.

"**Intellectual Property Security Agreement**" means any agreement executed on or after the Closing Date confirming or effecting the grant by any Credit Party of any Lien on any United States registered Intellectual Property owned by such Credit Party to the Collateral Agent, for the benefit of the Secured Parties, in accordance with this Agreement, including any of the following: (a) a Trademark Security Agreement substantially in the form attached as an annex to the Pledge and Security Agreement, (b) a Patent Security Agreement substantially in the form attached as an annex to the Pledge and Security Agreement or (c) a Copyright Security Agreement substantially in the form attached as an annex to the Pledge and Security Agreement, in each case, together with any and all supplements or amendments thereto.

"**Internet Domain Name**" means all right, title and interest (and all related IP Ancillary Rights) arising under any requirement of Law in or relating to internet domain names.

"**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), costs (including the costs of any investigation, study, assessment, sampling, testing, abatement, cleanup, removal, remediation or other response action associated with any Hazardous Materials), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); or (ii) any Environmental Claim or liability or obligation that may be imposed upon, incurred by or asserted against any Indemnitee pursuant to Environmental Law, including those relating to or arising from, directly or indirectly, any past or present activity, practice, or operation of, or land ownership, lease, operation, or use by Holdings or any of its Subsidiaries.

"**Indemnitee**" as defined in Section 10.3.

"**Indemnitee Agent Party**" as defined in Section 9.6.

"**Interest Payment Date**" means (a) the last day of each Fiscal Quarter, commencing on the first such date to occur after the Closing Date, and (b) the final maturity date of the Term Loan.

"**Interest Rate Agreement**" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (i) for the purpose of hedging the interest rate exposure associated with Holdings' and its Subsidiaries' operations, (ii) approved by Administrative Agent, and (iii) not for speculative purposes.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

"**Investment**" means (i) any direct or indirect purchase or other acquisition by Holdings or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than a Guarantor Subsidiary); (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Holdings from any Person (other than Holdings or any Guarantor Subsidiary), of any Capital Stock of such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Holdings or any of its Subsidiaries to any other Person (other than Holdings or any Guarantor Subsidiary), including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write ups, write downs or write offs with respect to such Investment.

"**IP Ancillary Rights**" means, with respect to any Intellectual Property (of the type described in clauses (a) and (c) of the definition of Intellectual Property), as applicable, all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.

"**IP License**" means all Contractual Obligations (and all related IP Ancillary Rights), whether written or oral, granting any right, title and interest in or relating to any Intellectual Property of the type described in clause (a) of the definition of Intellectual Property.

"**Joinder Agreement**" means a Joinder Agreement substantially in the form of Exhibit G delivered by a Credit Party pursuant to Section 5.10.

"**Joint Venture**" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"**Landlord Collateral Access Agreement**" means a Landlord Waiver and Consent Agreement substantially in the form of Exhibit I with such amendments or modifications as may be approved by Collateral Agent.

"**Laws**" or "**laws**" means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"**Lead Arranger**" as defined in the preamble hereto.

"**Lender**" means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement.

"**Lender Counterparty**" means each Lender or any Affiliate of a Lender counterparty to an Interest Rate Agreement or Currency Agreement (including any Person who is a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into an Interest Rate Agreement or Currency Agreement, ceases to be a Lender) including, without limitation, each such Affiliate that enters into a joinder agreement with Collateral Agent.

"**Lien**" means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

"Limited Condition Acquisition" means any acquisition, including by way of merger, or Investment, in each case, by Holdings or one or more of its Subsidiaries permitted pursuant to this Agreement the consummation of which is not conditioned upon the availability of, or on obtaining, third party financing.

"**Luxor Capital**" as defined in the preamble hereto.

"**Margin Stock**" as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"Material Adverse Effect" means a material adverse effect on (i) the business, operations, assets or financial condition of Parent and its Subsidiaries, taken as a whole; (ii) the ability of Parent and its Subsidiaries, taken as a whole, to timely perform their Obligations; (iii) the legality, validity, binding effect, or enforceability against a Credit Party of a Credit Document to which it is a party; or (iv) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Credit Document.

"**Material Contract**" means any contract or other arrangement to which Holdings or any of its Subsidiaries is a party (other than the Credit Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

"**Material Real Estate Asset**" means any fee owned Real Estate Asset having a fair market value in excess of $5,000,000 as of the date of the acquisition thereof.

"**Merger**" means the merger of Target with and into the Borrower with the Borrower as the surviving entity of such merger.

"**Merger Agreement**" means that certain Agreement and Plan of Merger dated as of May 16, 2018, by and among Parent, Borrower and Target.

"**Moody's**" means Moody's Investor Services, Inc.

"**Mortgage**" means any mortgage or deed of trust in which any Credit Party grants a Lien on any Material Real Estate Asset to Collateral Agent, as security for any Obligations, in form and substance satisfactory to the Collateral Agent, as it may be amended, supplemented or otherwise modified from time to time.

"**Multiemployer Plan**" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"**NAIC**" means The National Association of Insurance Commissioners, and any successor thereto.

"**Net Asset Sale Proceeds**" means, with respect to any Asset Sale, an amount equal to: (i) Cash payments received by Holdings or any of its Subsidiaries from such Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Asset Sale to the extent paid or payable to non-Affiliates, including (a) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale during the tax period the sale occurs, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Term Loan) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, and (c) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Holdings or any of its Subsidiaries in connection with such Asset Sale; provided that upon release of any such reserve, the amount released shall be considered Net Asset Sale Proceeds.

"**Net Insurance/Condemnation Proceeds**" means an amount equal to: (i) any Cash payments or proceeds received by Holdings or any of its Subsidiaries (a) under any casualty, business interruption or "**key man**" insurance policies in respect of any covered loss thereunder, or (b) as a result of the taking of any assets of Holdings or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by Holdings or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Holdings or such Subsidiary in respect thereof (or other immaterial costs reasonably anticipated to be incurred following such adjustment), and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition to the extent paid or payable to non-Affiliates, including income taxes payable as a result of any gain recognized in connection therewith.

"**Non-Consenting Lender**" as defined in Section 2.16.

"**Non-US Lender**" as defined in Section 2.14(c).

"**Note**" means a promissory note in the form of Exhibit B, as it may be amended, supplemented or otherwise modified from time to time.

"**Obligations**" means all obligations of every nature of each Credit Party from time to time owed to the Agents (including former Agents), the Lenders or any of them and Lender Counterparties, under any Credit Document or Interest Rate Agreement and Currency Agreement (including, without limitation, with respect to an Interest Rate Agreement or Currency Agreement, obligations owed thereunder to any person who was a Lender or an Affiliate of a Lender at the time such Interest Rate Agreement or Currency Agreement was entered into), whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), payments for early termination of Interest Rate Agreements or Currency Agreements, fees, expenses, indemnification or otherwise.

"**Obligee Guarantor**" as defined in Section 7.7.

"**OFAC**" as defined in Section 4.28(a).

"**Organizational Documents**" means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its bylaws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"**Parent**" means Waitr Holdings Inc., a Delaware corporation.

"**Parent Convertible Notes**" means the issuance by Parent of convertible-to-common equity promissory notes in an aggregate principal amount of up to $60,000,000 pursuant to the Parent Convertible Notes Credit Agreement.

"**Parent Convertible Notes Credit Agreement**" means that certain Credit Agreement, dated as of the date hereof, by and between Parent, the lenders party thereto, and Luxor Capital as administrative agent, lead arranger and lender.

"**Patents**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any requirement of Law in or relating to letters patent and applications therefor.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"**Perfection Certificate**" means a certificate in form satisfactory to Collateral Agent that provides information with respect to the personal or mixed property of each Credit Party.

"**Permitted Acquisition**" means any acquisition by Borrower or any of its Guarantor Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person; provided,

(i) immediately prior to, and after giving effect thereto, no Event of Default shall have occurred and be continuing or would result therefrom; provided, that in the case of a Limited Condition Acquisition, (A) no Event of Default shall exist at, or occur immediately after, the signing of the applicable definitive acquisition agreement for such Limited Condition Acquisition and (B) no Event of Default under Section 8.1(a), 8.1(f) or 8.1(g) shall exist before or after giving effect to the consummation of such Limited Condition Acquisition; and

(ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(iii) in the case of the acquisition of Capital Stock, all of the Capital Stock (except for any such Securities in the nature of directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Guarantor Subsidiary of Borrower in connection with such acquisition shall be owned 100% by Borrower or a Guarantor Subsidiary thereof, and the Borrower shall comply with Sections 5.10 and/or 5.11, as applicable, with respect to such target within the applicable time periods set forth therein;

(iv) any Person or assets or division as acquired in accordance herewith (y) shall be in same, substantially similar or related business or lines of business in which Borrower and/or its Subsidiaries are engaged as of the Closing Date and (z) for the four quarter period most recently ended prior to the date of such acquisition for which financial statements are available, shall have generated earnings before income taxes, depreciation, and amortization during such period that shall exceed the amount of capital expenditures related to such Person or assets or division during such period;

(v) the acquisition shall have been approved by the board of directors or other governing body or controlling Person of the Person acquired or the Person from whom such assets or division is acquired;

(vi) at least two (2) Business Days prior to the consummation thereof (or such shorter period as Administrative Agent may agree in its sole discretion), to the extent available, (x) a due diligence package (including a quality of earnings report, to the extent available) in each case, prior to closing of such acquisition, and (y) (I) notice of such acquisition setting forth in reasonable detail the terms and conditions of such acquisition and (II) pro forma financial statements of Parent and its Subsidiaries after giving effect to the consummation of such acquisition and the incurrence or assumption of any Indebtedness in connection therewith;

(vii) after giving effect to such acquisition, Consolidated Liquidity shall be at least $15,000,000; and

(viii) as soon as available, executed counterparts of the respective material agreements, documents, consents and approvals pursuant to which such acquisition is to be consummated.

"**Permitted Holder**" means Luxor Capital, Jefferies Financial Group Inc. and Fertitta Entertainment Inc., and their respective Affiliates.

"**Permitted Liens**" means each of the Liens permitted pursuant to Section 6.2.

"**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"**PIK Portion**" has the meaning set forth in Section 2.5(d).

"**Pledge and Security Agreement**" means the Pledge and Security Agreement to be executed by Borrower and each Guarantor substantially in the form of Exhibit H, as it may be amended, supplemented or otherwise modified from time to time.

"**Prepayment Premium**" as defined in Section 2.8(b).

"**Principal Office**" means, for the Administrative Agent, such Person's "Principal Office" as set forth on Appendix B, or such other office as such Person may from time to time designate in writing to Borrower, Administrative Agent and each Lender; provided, however, that for the purpose of making any payment on the Obligations or any other amount due hereunder or any other Credit Document, the Principal Office of Administrative Agent shall be 1114 Avenue of the Americas, 28th Floor, New York, NY 10036 (or such other location within the City and State of New York as Administrative Agent may from time to time designate in writing to Borrower and each Lender).

"**Projections**" as defined in Section 4.8.

"**Pro Rata Share**" means with respect to all payments, computations and other matters relating to the Term Loan of any Lender, the percentage obtained by dividing (a) the Term Loan Exposure of that Lender, by (b) the aggregate Term Loan Exposure of all Lenders. For all other purposes with respect to each Lender, "**Pro Rata Share**" means the percentage obtained by dividing (A) an amount equal to the sum of the Term Loan Exposure of that Lender, by (B) an amount equal to the sum of the aggregate Term Loan Exposure of all Lenders.

"**PTE**" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property.

"**Real Property Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Holdings or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"**Register**" as defined in Section 2.4(b).

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of the date hereof, by and between Parent and the investors party thereto.

"**Regulation D**" means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"**Related Agreements**" means, collectively, (i) the Parent Convertible Notes, the Parent Convertible Notes Credit Agreement, the Registration Rights Agreement and the material documents, instruments and agreements entered into in connection with the Parent Convertible Notes, (ii) the Merger Agreement and the material documents, instruments and agreements entered into in connection with the Merger Agreement, and (iii) the definitive documentation in connection with the Warrants.

"**Related Fund**" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water, sediment or groundwater.

"**Replacement Lender**" as defined in Section 2.16.

"**Required Prepayment Date**" as defined in Section 2.10(b).

"**Required Lenders**" means one or more Lenders having or holding Term Loan Exposure and representing more than 50% of the aggregate Term Loan Exposure of all Lenders.

"**Restricted Payment**" means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of Parent, Holdings or Borrower now or hereafter outstanding, except a dividend payable solely in shares of that class of Capital Stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of Parent, Holdings or Borrower now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of Parent, Holdings or Borrower now or hereafter outstanding; and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness.

"**S&P**" means Standard & Poor's Ratings Group, a division of The McGraw Hill Corporation.

"**Sanctioned Country**" as defined in Section 4.28(a).

"**Sanctions**" as defined in Section 4.28(a).

"**SDN List**" as defined in Section 4.28(a).

"**Secured Parties**" means each Agent, each Lender, each other Indemnitee and each other holder of any Obligation of a Credit Party.

"**Securities**" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "**securities**" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"**Software**" means (a) all computer programs, including source code and object code versions, (b) all data, databases and compilations of data, whether machine readable or otherwise, and (c) all documentation, training materials and configurations related to any of the foregoing.

"**Solvency Certificate**" means a Solvency Certificate of the chief financial officer of Holdings substantially in the form of Exhibit F.

"**Solvent**" means, with respect to any Credit Party, that as of the date of determination, both (i) (a) the sum of such Credit Party's debt (including contingent liabilities) does not exceed the present fair saleable value of such Credit Party's present assets; (b) such Credit Party's capital is not unreasonably small in relation to its business as contemplated on the Funding Date and reflected in the Projections or with respect to any transaction contemplated or undertaken after the Funding Date; and (c) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such Person is "**solvent**" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No.5).

"**Subordinated Indebtedness**" means the Parent Convertible Notes and any other Indebtedness, in each case, expressly subordinated to the Obligations as to right and time of payment and having such subordination and other terms as are, in each case, reasonably satisfactory to the Administrative Agent.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "**qualifying share**" of the former Person shall be deemed to be outstanding.

"**Target**" means, prior to the consummation of the Merger, Waitr Incorporated, a Louisiana corporation.

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed; provided, "**Tax on the overall net income**" of a Person shall be construed as a reference to a tax imposed by the jurisdiction in which that Person is organized or in which that Person's applicable principal office (and/or, in the case of a Lender, its lending office) is located or in which that Person (and/or, in the case of a Lender, its lending office) is deemed to be doing business on all or part of the net income, profits or gains (whether worldwide, or only insofar as such income, profits or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable lending office).

"**Term Loan**" means a Term Loan made by a Lender to Borrower pursuant to Section 2.1(a).

"**Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund the Term Loan and "**Term Loan Commitments**" means such commitments of all Lenders in the aggregate. The amount of each Lender's Term Loan Commitment is set forth on Appendix A, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Term Loan Commitments as of the Closing Date is $25,000,000.

"**Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loan of such Lender; provided, at any time prior to the making of the Term Loan, the Term Loan Exposure of any Lender shall be equal to such Lender's Term Loan Commitment.

"**Term Loan Maturity Date**" means the earlier of (i) November 15, 2022, and (ii) the date that the Term Loan shall become due and payable in full hereunder, whether by acceleration or otherwise.

"**Terminated Lender**" as defined in Section 2.16.

"**Title Policy**" as defined in Section 5.11(b).

"**Trade Secrets**" means all right, title and interest (and all related IP Ancillary Rights) arising under any requirement of Law in or relating to trade secrets.

"**Trademark**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any requirement of Law in or relating to trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and, in each case, all goodwill associated therewith, all registrations and recordations thereof and all applications in connection therewith.

"**Transactions**" means, collectively, (a) the execution and delivery by the Credit Parties of the Credit Documents to which they are a party and the borrowing of the Term Loan hereunder on the Closing Date, (b) the issuance of the Warrants, (c) the Merger and the other transactions contemplated by the Merger Agreement, (d) the repayment of the Existing Indebtedness, (e) the issuance of the Parent Convertible Notes and (f) the payment of Transaction Costs.

"**Transaction Costs**" means the fees, costs and expenses payable or otherwise borne by Parent, Holdings, Borrower or any of Borrower's Subsidiaries on or before the Closing Date or within 90 days thereafter in connection with the Transactions and the transactions contemplated thereby.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"**USA Patriot Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56.

"**Waitr Material Adverse Effect**" means any change, event, fact or condition, individually or in the aggregate, that has had or would reasonably be expected to have a material adverse effect upon (a) the business, results of operations, workforce, prospects, properties, assets, liabilities or condition (financial or otherwise) of Target, or (b) the ability of Target to consummate the transactions contemplated by the Merger Agreement or to perform its obligations thereunder; provided, however, that the following shall not be deemed either alone or in combination to constitute, and no adverse change, event, fact or condition directly resulting from any of the following shall be taken into account in determining whether any change, event, fact or condition has had or would reasonably be expected to have a Waitr Material Adverse Effect: (i) changes in general economic conditions, to the extent that they do not have a materially disproportionate effect on Target; (ii) changes generally affecting the specific industry in which Target operates, to the extent that they do not have a materially disproportionate effect on Target relative to other industry participants; and (iii) any act of terrorism, war, calamity or act of God, to the extent that such act does not have a materially disproportionate effect on Target.

"**Waivable Mandatory Prepayment**" as defined in Section 2.10(b).

"**Warrants**" means warrants issued by Parent to Luxor Capital Partners, LP, Luxor Capital Partners Offshore Master Fund, LP, Luxor Wavefront, LP and Lugard Road Capital Master Fund, LP to purchase up to an aggregate of $5,000,000 of common stock of Parent.

"**Write-Down and Conversion Powers**" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.2. Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Holdings to Lenders pursuant to Sections 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation. Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements. For the avoidance of doubt, (i) notwithstanding any change in GAAP after the Closing Date that would require lease obligations that would be treated as operating leases as of the Closing Date to be classified and accounted for as Capital Leases or otherwise reflected on Parent's consolidated balance sheet, such obligations shall continue to be excluded from the definition of Indebtedness and (ii) any lease that was entered into after the date of this Agreement that would have been considered an operating lease under GAAP in effect as of the Closing Date shall be treated as an operating lease for all purposes under this Agreement and the other Credit Documents, and obligations in respect thereof shall be excluded from the definition of Indebtedness.

1.3. Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. Any capitalized terms used in any Schedules attached hereto and not otherwise defined therein shall have the meanings set forth in this Agreement (or, in the absence of any ascribed meaning, the meaning customarily ascribed to any such term in the applicable industry or in general commercial usage). The use herein of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

1.4. Certifications. Any certificate or other writing required hereunder or under any other Credit Document to be certified by any officer or other authorized representative of any Person shall be deemed to be executed and delivered by the individual holding such office solely in such individual's capacity as an officer or other authorized representative of such Person and not in such officer's or other authorized representative's individual capacity.

SECTION 2. LOANS

2.1. Term Loan.

(a) Term Loan Commitments. Subject to the terms and conditions hereof, each Lender severally agrees to make, on the Funding Date, a portion of the Term Loan to Borrower in an amount equal to such Lender's Term Loan Commitment.

Borrower may make only one borrowing under the Term Loan Commitment which borrowing (i) shall be made on the Closing Date and (ii) shall be funded on the Funding Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.8 and 2.9, all amounts owed hereunder with respect to the Term Loan shall be paid in full no later than the Term Loan Maturity Date. Each Lender's Term Loan Commitment shall terminate immediately and without further action on the Funding Date after giving effect to the funding of such Lender's Term Loan Commitment on such date.

(b) Borrowing Mechanics for Term Loan.

(i) Borrower shall deliver to Administrative Agent a fully executed Funding Notice no later than one Business Day prior to the Closing Date. Promptly upon receipt by Administrative Agent of such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing.

(ii) Each Lender shall make its share of the Term Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the Funding Date, by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Term Loan available to Borrower on the Funding Date by causing an amount of same day funds in Dollars equal to the proceeds of the Term Loan to be credited to the account of Borrower at Administrative Agent's Principal Office or to such other account as may be designated in writing to Administrative Agent by Borrower.

(c) Promise to Pay. Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of the Term Loan of such Lender made to such Borrower due and payable on the Term Loan Maturity Date.

2.2. Pro Rata Shares. The Term Loan shall be made, and all participations purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that (i) the failure of any Lender to fund any such Loan shall not relieve any other Lender of its obligation hereunder and (ii) no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make its share of the Term Loan requested hereunder or purchase a participation required hereby nor shall any Term Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make its share of the Term Loan requested hereunder or purchase a participation required hereby.

2.3. Use of Proceeds. The proceeds of the Term Loan made on the Closing Date shall be used by Borrower (i) to fund a portion of the consideration and to pay fees and expenses in connection with the closing of the Merger and (ii) to finance the working capital needs and other general corporate purposes of the Borrower (including for Permitted Acquisitions). No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

2.4. Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower to such Lender, including the amounts of the Term Loan made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Borrower, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of the Term Loan; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent shall maintain at its Principal Office a register for the recordation of the names and addresses of each Lender and each Lender's share of the Term Loan from time to time (the "**Register**"). The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record in the Register the Term Loan, and each repayment or prepayment in respect of the principal amount of the Term Loan, and any such recordation shall be conclusive and binding on Borrower and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of the Term Loan. Borrower hereby designates the entity serving as Administrative Agent to serve as Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.4, and Borrower hereby agrees that, to the extent such entity serves in such capacity, the entity serving as Administrative Agent and its officers, directors, employees, agents and affiliates shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to Borrower (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Borrower's receipt of such notice) a Note to evidence such Lender's share of the Term Loan.

2.5. Interest on Term Loan.

(a) Except as otherwise set forth herein, the Term Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof at the rate of 7.0% per annum.

(b) Interest payable pursuant to Section 2.5(a) shall be computed on the basis of a 360 day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on the Term Loan, the date of the making of such Term Loan shall be included and the date of payment of such Term Loan shall be excluded; provided, if the Term Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Term Loan.

(c) Except as otherwise set forth herein, interest on the Term Loan shall be payable in arrears, and, other than as elected pursuant to Section 2.5(d) below, in Cash on and to (i) each Interest Payment Date applicable to the Term Loan; (ii) upon any prepayment of the Term Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity.

(d) For each Interest Payment Date (other than an Interest Payment Date due to final maturity of the Term Loan), the Borrower may elect, by written notice delivered to the Administrative Agent at least five (5) Business Days prior to any such Interest Payment Date, to pay the interest due on the Term Loan on such Interest Payment Date as follows: (i) all or a portion of the interest accrued from the immediately preceding Interest Payment Date (or, if no interest has been paid, the Closing Date) at the interest rate set forth in Section 2.5(a) above and, to the extent applicable, including any additional interest pursuant to the Default Rate set forth in Section 2.6, per annum for such period in kind (the "**PIK Portion**") which shall be added to the outstanding principal amount of the Term Loan (and thereafter bear interest at the interest rate set forth in Section 2.5(a) above and, if applicable, the Default Rate and otherwise be treated as Term Loan for purposes of this Agreement) and (ii) the remaining portion of interest accrued, if any, from the immediately preceding Interest Payment Date on which interest was paid (or, if no interest has been paid, the Closing Date) in Cash. Any such written notice from the Borrower shall be accompanied by a certificate of a responsible officer of the Borrower specifying (1) the percentage of interest that will constitute the PIK Portion, (2) the dollar amount of the PIK Portion that will be added to the outstanding principal amount of the Term Loan on such Interest Payment Date and (3) the dollar amount of interest that will be paid in Cash on the Term Loan on such Interest Payment Date; provided, that if no such notice is provided, 100% of such interest shall be paid in Cash.

2.6. Default Interest. Upon the occurrence and during the continuance of an Event of Default, the principal amount of the Term Loan outstanding and, to the extent permitted by applicable law, any interest payments on the Term Loan or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand at a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder with respect to the Term Loan. Payment or acceptance of the increased rates of interest provided for in this Section 2.6 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

2.7. Fees. Borrower agrees to pay to Administrative Agent the fees in the amounts and at the times separately agreed in the Fee Letter.

2.8. Voluntary Prepayments.

(a) Voluntary Prepayments.

(i) At any time and from time to time, Borrower may prepay the Term Loan on any Business Day in whole or in part, in an aggregate minimum amount of $1,000,000 and integral multiples of $1,000,000 in excess of that amount.

(ii) All such prepayments shall be made upon not less than one Business Day's prior written or telephonic notice given to Administrative Agent by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent (and Administrative Agent will promptly transmit such telephonic or original notice by telefacsimile or telephone to each Lender); provided, that any such notice may be conditioned on the occurrence of one or more other transactions or events. Upon the giving of any such notice, the principal amount of the Term Loan specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.10(a).

(b) Call Protection. Upon the occurrence, in each case, on or prior to the date that is twelve months after the Closing Date, of (i) any voluntary prepayments pursuant to Section 2.8(a) or mandatory prepayments pursuant to Section 2.9 (in each case, whether before or after an Event of Default), (ii) any payment, repayment or redemption of the Obligations following acceleration thereof (whether before or after the commencement of any bankruptcy event or following the occurrence of any Event of Default), or (iii) the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations in any bankruptcy, foreclosure (whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure or the making of a distribution of any kind in any insolvency proceeding in full or partial satisfaction of the Obligations, a premium (the "**Prepayment Premium**") equal to 5.0% of the aggregate principal amount of the Term Loan prepaid (including any PIK Portion added to the outstanding principal amount of the Term Loan from time to time) shall be payable to the Administrative Agent, for the benefit of all Lenders entitled to a portion of such prepayment premium, calculated when such amount is payable (in the case of a mandatory prepayment) or paid (in the case of a voluntary prepayment).

2.9. Mandatory Prepayments/Commitment Reductions.

(a) Asset Sales. No later than the third Business Day following the date of receipt by any Credit Party of any Net Asset Sale Proceeds in excess of $1,000,000 in the aggregate in any Fiscal Year, Borrower shall prepay the Term Loan in an aggregate amount equal to such Net Asset Sale Proceeds; provided, so long as no Event of Default shall have occurred and be continuing, upon delivery of a written notice to Administrative Agent, Borrower shall have the option, directly or through one or more Subsidiaries, to invest Net Asset Sale Proceeds (the "**Asset Sale Reinvestment Amounts**") in long-term productive assets of the general type used in the business of Borrower if such assets are purchased or constructed (i) within two hundred seventy (270) days following receipt of such Net Asset Sale Proceeds or, (ii) if the Borrower or one or more of its Subsidiaries has entered into a binding contract to reinvest the Net Asset Sale Proceeds within such 270 day period, within 360 days following receipt of such Net Asset Sale Proceeds. In the event that the Asset Sale Reinvestment Amounts are not reinvested by Borrower in accordance with clauses (i) and (ii) above, Administrative Agent shall apply such Asset Sale Reinvestment Amounts to the Obligations as set forth in Section 2.10(a).

(b) Insurance/Condemnation Proceeds. No later than the third Business Day following the date of receipt (after the Closing Date) by Holdings or any of its Subsidiaries, or Administrative Agent as loss payee, of any Net Insurance/Condemnation Proceeds, Borrower shall prepay the Term Loan in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided, (i) so long as no Event of Default shall have occurred and be continuing, and (ii) to the extent that aggregate Net Insurance/Condemnation Proceeds in any Fiscal Year do not exceed $1,000,000, Borrower shall have the option, directly or through one or more of its Subsidiaries to invest such Net Insurance/Condemnation Proceeds within two hundred seventy (270) days of receipt thereof (or, if the Borrower or one or more of its Subsidiaries has entered into a binding contract to reinvest the Net Insurance/Condemnation Proceeds within such 270 day period, 360 days following receipt thereof) in long term productive assets of the general type used in the business of Holdings and its Subsidiaries, which investment may include the repair, restoration or replacement of the applicable assets thereof.

(c) Issuance of Equity Securities. No later than the third Business Day following receipt by Holdings of any Cash proceeds in excess of $1,000,000 in any Fiscal Year from a capital contribution to, or the issuance of any Capital Stock of, Holdings or any of its Subsidiaries (other than Capital Stock issued (i) pursuant to any employee stock or stock option compensation plan, (ii) stock issued in connection with the Merger, (iii) to fund a Permitted Acquisition or other permitted Investment or make Capital Expenditures or (iv) for purposes approved in writing by Administrative Agent), Borrower shall prepay the Term Loan in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, in each case, paid to non-Affiliates, including reasonable legal fees and expenses.

(d) Issuance of Debt. No later than the third Business Day following receipt by Holdings or any of its Subsidiaries of any Cash proceeds from the incurrence of any Indebtedness of Holdings or any of its Subsidiaries (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1), Borrower shall prepay the Term Loan in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, in each case, paid to non-Affiliates, including reasonable legal fees and expenses.

(e) Parent Convertible Notes and Warrants Registration. In the event that either (i) the registration statement for the resale of the shares of common stock underlying the Warrants and the Parent Convertible Notes has not been filed within 30 days after the Closing Date, or (ii) such registration statement is not effective within 180 days after the Closing Date, the then outstanding principal amount of the Term Loan will become repayable in full and such repayment shall be made by Borrower within nine months after the first occurrence of either such event.

(f) Termination of Parent Convertible Notes. In the event that the definitive agreements documenting the issuance of the Parent Convertible Notes are terminated for any reason, the then outstanding principal amount of the Term Loan will immediately become repayable in full.

(g) Prepayment Certificate. Concurrently with any prepayment of the Term Loan, Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds and compensation owing to Lenders under Section 2.8(b), if any, as the case may be. In the event that Borrower shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Borrower shall promptly make an additional prepayment of the Term Loan in an amount equal to such excess, and Borrower shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

2.10. Application of Prepayments/Reductions.

(a) Any voluntary prepayments of the Term Loan pursuant to Section 2.8 and any mandatory prepayment of the Term Loan pursuant to Section 2.9 shall be applied as follows:

first, to the payment of all fees, and all expenses specified in Section 10.2, to the full extent thereof;

second, to the payment of any accrued interest at the Default Rate, if any;

third, to the payment of any accrued interest (other than Default Rate interest);

fourth, to the payment of the Prepayment Premium, if any, on the Term Loan;

fifth, except in connection with any Waivable Mandatory Prepayment in Section 2.10(b), to prepay the Term Loan.

(b) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, in the event Borrower is required to make any mandatory prepayment (a "**Waivable Mandatory Prepayment**") of the Term Loan, not less than three Business Days prior to the date (the "**Required Prepayment Date**") on which Borrower is required to make such Waivable Mandatory Prepayment, Borrower shall notify Administrative Agent of the amount of such prepayment, and Administrative Agent will promptly thereafter notify each Lender holding outstanding Term Loan of the amount of such Lender's Pro Rata Share of such Waivable Mandatory Prepayment and such Lender's option to refuse such amount. Each such Lender may exercise such option by giving written notice to Borrower and Administrative Agent of its election to do so on or before the first Business Day prior to the Required Prepayment Date (it being understood that any Lender which does not notify Borrower and Administrative Agent of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, Borrower shall pay to Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected not to exercise such option, to prepay the Term Loan of such Lenders (which prepayment shall be applied to the principal of the Term Loan in accordance with Section 2.10(a)), and (ii) to the extent of any excess, to Borrower for working capital and general corporate purposes.

2.11. General Provisions Regarding Payments.

(a) All payments by Borrower of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent, for the account of Lenders, not later than 2:00 p.m. (New York City time) on the date due via wire transfer of immediately available funds to account number 849108725 maintained by Administrative Agent with JPMorgan Chase Bank, N.A. (ABA No. 021000021) in New York City (or at such other location or bank account within the City and State of New York as may be designated by Administrative Agent from time to time); funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Borrower on the next Business Day.

(b) All payments in respect of the principal amount of the Term Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid.

(c) Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due with respect thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder.

(e) Administrative Agent shall deem any payment by or on behalf of Borrower hereunder that is not made in same day funds prior to 2:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a), but only to the extent that such non-conforming payment is not received by the Administrative Agent on the next Business Day following the date when due. Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the Default Rate determined pursuant to Section 2.6 from the date such amount was due and payable until the date such amount is paid in full.

(f) If an Event of Default shall have occurred and not otherwise been waived, and the Obligations have become due and payable in full hereunder, whether by acceleration, maturity or otherwise, all payments or proceeds received by any Agent hereunder or under any Collateral Document in respect of any of the Obligations (including, but not limited to, Obligations arising under any Interest Rate Agreement or Currency Agreement that are owing to any Lender or Lender Counterparty), including, but not limited to all proceeds received by any Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral, shall be applied in full or in part as follows: first, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to each Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by any Agent in connection therewith, and all amounts for which any Agent is entitled to indemnification hereunder or under any Collateral Document (in its capacity as an Agent and not as a Lender) and all advances made by any Agent under any Collateral Document for the account of the applicable Grantor, and to the payment of all costs and expenses paid or incurred by any Agent in connection with the exercise of any right or remedy hereunder or under any Collateral Document, all in accordance with the terms hereof or thereof; second, to the extent of any excess of such proceeds, to the payment of all other Obligations for the ratable benefit of the Lenders and the Lender Counterparties; and third, to the extent of any excess of such proceeds, to the payment to or upon the order of such Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

2.12. Ratable Sharing. Lenders hereby agree among themselves that, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of the Term Loan made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

2.13. Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.14 (which shall be controlling with respect to the matters covered thereby), in the event that any Change of Law shall impose on any Lender: (i) any additional Tax (other than any Tax on the overall net income of such Lender) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to any Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or its obligations hereunder; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining the Term Loan hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto in an amount deemed by such Lender to be material; then, in any such case, Borrower shall promptly pay to such Lender, within five (5) Business Days following receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as each Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender shall deliver to Borrower (with a copy to Lenders) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to any such Lender under this Section 2.13(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender shall have determined (which determination shall, absent manifest effort, be final and conclusive and binding upon all parties hereto) that any Change of Law has imposed on any Lender relating to (A) the adoption, effectiveness, phase in or applicability of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or (B) compliance by any Lender (or its applicable lending office) or any company controlling such Lender with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, in each case after the Closing Date, has or would have the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of, or with reference to, such Lender's share of the Term Loan, or participations therein or other obligations hereunder with respect to the Term Loan to a level below that which such Lender or such controlling company could have achieved but for such adoption, effectiveness, phase in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling company with regard to capital adequacy), then from time to time, within five (5) Business Days after receipt by Borrower from such Lender of the statement referred to in the next sentence, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling company on an after tax basis for such reduction. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.13(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error. The Administrative Agent shall deliver to Borrower (with a copy to Lenders) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to any such Lender under this Section 2.13(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(c) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.13 shall not constitute a waiver of such Lender's right to demand such compensation; provided, however, that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.13 for any increased costs or reductions incurred more than 180 days prior to the date such Lender notifies the Borrower of the Change of Law giving rise to such increased costs or reductions and of Lender's intention to claim compensation therefor; provided, further, that if the Change of Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof.

2.14. Taxes; Withholding, etc.

(a) Payments to Be Free and Clear. All sums payable by any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Lender) imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of any Credit Party or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If any Credit Party or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by any Credit Party to Administrative Agent or any Lender under any of the Credit Documents: (i) Borrower shall notify Administrative Agent in writing of any such requirement or any change in any such requirement as soon as Borrower becomes aware of it; (ii) Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (iii) the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including such deductions and withholdings applicable to additional sums payable under this provision), Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Borrower shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, no such additional amount shall be required to be paid to any Lender under clause (iii) above (A) with respect to Taxes imposed as a result of such Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), (B) except to the extent that any Change of Law after the date hereof (in the case of each Lender listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment Agreement pursuant to which such Lender became a Lender (other than pursuant to an assignment request by the Borrower under Section 2.16) (in the case of each other Lender) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof or at the date of such Assignment Agreement, in respect of payments to such Lender and (C) with respect to Taxes imposed under FATCA.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "**Non-US Lender**") shall deliver to Administrative Agent for transmission to Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower or Administrative Agent (each in the reasonable exercise of its discretion):

(i) in the case of a Non-US 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 Credit Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" Article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" Article of such tax treaty;

(ii) executed copies of IRS Form W-8ECI;

(iii) in the case of a Non-US Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Non-US Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "**U.S. Tax Compliance Certificate**") and (y) executed copies of IRS Form W 8BEN or W-8BEN-E, as applicable; or

(iv) to the extent a Non-US Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Non-US Lender is a partnership and one or more direct or indirect partners of such Non-US Lender are claiming the portfolio interest exemption, such Non-US Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner.

(d) Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to Section 2.14(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Borrower two new original copies of such forms, certificates or other evidence reasonably requested by Borrower to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence. Borrower shall not be required to pay any additional amount to any Non-US Lender under Section 2.14(b)(iii) if such Lender shall have failed (1) to deliver the forms, certificates or other evidence referred to in this Section 2.14(d), or (2) to notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of Section 2.14(c) on the Closing Date or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this Section 2.14(d) shall relieve Borrower of its obligation to pay any additional amounts pursuant this Section 2.14 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

2.15. Obligation to Mitigate. Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering the Term Loan, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would entitle such Lender to receive payments under Section 2.13 or 2.14, it will, to the extent not inconsistent with any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.13 or 2.14 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of the Term Loan through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect the Term Loan or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.15 unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this Section 2.15 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Administrative Agent) shall be conclusive absent manifest error.

2.16. Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "**Increased-Cost Lender**") shall give notice to Borrower that such Lender is entitled to receive payments under Section 2.13, 2.14 or 2.15, (ii) the circumstances which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Borrower's request for such withdrawal; or (b) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Administrative Agent shall have been obtained but the consent of one or more of such other Lenders (each a "**Non-Consenting Lender**") whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender or Non-Consenting Lender (the "**Terminated Lender**"), Administrative Agent may (which, in the case of an Increased-Cost Lender, only after receiving written request from Borrower to remove such Increased-Cost Lender), by giving written notice to Borrower and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Term Loan in full to one or more Eligible Assignees (each a "**Replacement Lender**") in accordance with the provisions of Section 10.6 and Terminated Lender shall pay any fees payable thereunder in connection with such assignment; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Term Loan of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender; (2) on the date of such assignment, Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 2.13 or 2.14; and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. In the event that the Terminated Lender fails to execute an Assignment Agreement pursuant to Section 10.6 within five Business Days after receipt by the Terminated Lender of notice of replacement pursuant to this Section 2.16 and presentation to such Terminated Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 2.16, the Terminated Lender shall be deemed to have executed and delivered such Assignment Agreement, and upon the execution and delivery of Assignment Agreement by the Replacement Lender and Administrative Agent, shall be effective for purposes of this Section 2.16 and Section 10.6. Upon the prepayment of all amounts owing to any Terminated Lender such Terminated Lender shall no longer constitute a "**Lender**" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

SECTION 3. CONDITIONS PRECEDENT

3.1. Closing Date. The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(a) Credit Documents. Administrative Agent shall have received sufficient copies of each Credit Document duly executed and delivered by each applicable Credit Party for each Lender.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received (i) a certificate of each Credit Party, dated the Closing Date and executed by a secretary, assistant secretary or other senior officer (as the case may be) thereof, which shall (A) certify that attached thereto is a true and complete copy of the resolutions or written consents of its shareholders, board of directors, board of managers, members or other governing body authorizing the execution, delivery and performance of the Credit Documents to which it is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect, (B) identify by name and title and bear the signatures of the officers, managers, directors or authorized signatories of such Credit Party authorized to sign the Credit Documents to which it is a party on the Closing Date and (C) certify (x) that attached thereto is a true and complete copy of the certificate or articles of incorporation or organization (or memorandum of association or other equivalent thereof) of such Credit Party certified as of a recent date by the relevant authority of the jurisdiction of organization of such Credit Party and a true and correct copy of its by-laws or operating, management, partnership or similar agreement and (y) that such documents or agreements have not been amended (except as otherwise attached to such certificate and certified therein as being the only amendments thereto as of such date) and (ii) a good standing (or equivalent) certificate as of a recent date for such Credit Party from its jurisdiction of organization.

(c) Transactions.

(i) Merger. Prior to or simultaneously with the initial incurrence of the Term Loan, (A) all conditions to closing set forth in the Merger Agreement shall have been satisfied (including, without limitation, the final vote of the shareholders of Parent and any approvals required by Nasdaq) and (B) the Merger shall be consummated in accordance with the terms of the Merger Agreement, but without giving effect to any amendment, waiver or consent by Parent, Holdings or the Borrower that is materially adverse to the interests of the Lenders without the consent of the Lenders (which consent shall not be unreasonably withheld, conditioned or delayed); provided that Luxor Capital's consent will be required for any amendment, modification or waiver that would involve: (1) any negative impact on creditworthiness; (2) any impact on capital structure (including issuance of equity and equity-based incentives), except for issuances by Target of up to 150,000 shares of Target common equity or equity based incentives in connection with new hires; (3) incurrence of any new Indebtedness or other liabilities outside the ordinary course of business for Target; (4) any related-party transactions (covering new agreements or modifications to existing agreements) by Parent or Target; (5) any changes to senior management of Parent or Target; and (6) any waiver involving compliance with Law, and (C) there shall be no breach, default or grounds for default under the Merger Agreement.

(ii) Issuance of Warrants. Prior to or simultaneously with the initial incurrence of the Term Loan, the Warrants shall have been issued.

(iii) Parent Convertible Notes. Prior to or simultaneously with the initial incurrence of the Term Loan, the issuance of the Parent Convertible Notes shall be consummated.

(iv) Exchange of Private Placement Warrants. Prior to or simultaneously with the initial incurrence of the Term Loan, the 14,000,000 private placement warrants held by Fertitta Entertainment, Inc. and Jefferies Financial Group Inc. shall be exchanged for 1,600,000 shares of Parent's common stock.

(v) Satisfaction of Parent's Convertible Loan. Prior to or simultaneously with the initial incurrence of the Term Loan, Fertitta Entertainment, Inc. shall have received (i) $1,250,000 in Cash and (ii) 75,000 shares of Parent's common stock, in full satisfaction of Fertitta Entertainment, Inc.'s prior $1,500,000 loan to Parent.

(d) Existing Indebtedness. On the Closing Date, Parent and its Subsidiaries and Target shall have (i) repaid in full all Existing Indebtedness, (ii) terminated any commitments to lend or make other extensions of credit thereunder and (iii) delivered to Administrative Agent all documents or instruments necessary to release all Liens securing Existing Indebtedness or other obligations of Parent and its Subsidiaries or Target thereunder being repaid on the Closing Date.

(e) Governmental Authorizations and Consents. Each Credit Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the Transactions and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent. All applicable waiting periods shall have expired without any action being taken or threatened in writing to any Credit Party by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the Transactions or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(f) Perfection Certificate. A completed Perfection Certificate dated the Closing Date and executed by an Authorized Officer of each Credit Party, together with all attachments contemplated thereby, together with the delivery of (A) the results of a recent lien search, by a Person satisfactory to Collateral Agent, of, including but not limited to, all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property of any Credit Party in the jurisdictions specified in the Perfection Certificate, together with copies of all such filings disclosed by such search, and (B) UCC termination statements (or similar documents) duly executed by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements (or equivalent filings) disclosed in such search (other than any such financing statements in respect of Permitted Liens).

(g) Pledged Stock; Stock Powers; Pledged Debt Instruments. The Collateral Agent (or its bailee) shall have received (i) the certificates representing the Capital Stock required to be pledged pursuant to the Pledge and Security Agreement, together with an undated stock or similar power for each such certificate executed in blank by a duly Authorized Officer of the pledgor thereof and (ii) any Pledged Debt Instruments (as defined in the Pledge and Security Agreement) required to be pledged pursuant to the Pledge and Security Agreement, endorsed in blank (or accompanied by a transfer form endorsed in blank) by the pledger thereof.

(h) Filings Registrations and Recordings. Each document (including any UCC (or similar) financing statement or Intellectual Property Security Agreement filing with the Applicable IP Office (as defined in the Pledge and Security Agreement)) required by any Collateral Document or under law to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral required to be delivered pursuant to such Collateral Document, prior and superior in right to any other Person (other than with respect to Permitted Liens), shall have been received by the Collateral Agent and be in proper form for filing, registration or recordation.

(i) No Issuances of Additional Capital Stock. Since August 23, 2018, except as contemplated by the Related Agreements, Parent shall not have issued any additional shares of Capital Stock (including any warrants, options or other instruments convertible into shares of Capital Stock), including previously outstanding shares of common stock that have been redeemed other than pursuant to Sections 3.1(c)(iv) and 3.1(c)(v); provided that Parent may issue (or re-issue) shares of Capital Stock solely to the extent required in order to fund the Minimum Cash Consideration Amount (as defined in the Merger Agreement).

(j) Evidence of Insurance. Collateral Agent shall have received a certificate from Borrower's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, naming the Collateral Agent, for the benefit of Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 5.5.

(k) Opinions of Counsel to Credit Parties. Lenders and their respective counsel shall have received originally executed copies of a customary opinion of Winston & Strawn LLP, counsel for Credit Parties, dated as of the Closing Date in form and substance satisfactory to Administrative Agent (and each Credit Party hereby instructs such counsel to deliver such opinions to Agents and Lenders).

(l) Fees. Prior to or substantially concurrently with the funding of the Term Loan hereunder, the Administrative Agent shall have received (i) payment of all fees required to be paid by the Borrower on the Closing Date pursuant to the Commitment Letter or Fee Letter and (ii) reimbursement for all costs and expenses required to be paid to Luxor Capital and/or its Affiliates by the Borrower pursuant to the Commitment Letter, in each case, for which invoices have been presented at least two Business Days prior to the Closing Date (including the reasonable and documented out-of-pocket costs and expenses of Luxor Capital's and its Affiliates' due diligence investigation and any fees and expenses of legal counsel), which amounts may be offset against the proceeds of the Term Loan.

(m) Solvency Certificate. On the Closing Date, Administrative Agent shall have received a Solvency Certificate from the chief financial officer (or other financial officer with reasonably equivalent responsibilities) of the Borrower certifying as to the matters set forth therein dated as of the Closing Date.

(n) Minimum Liquidity. The Borrower shall demonstrate in form and substance reasonably satisfactory to Administrative Agent that on the Closing Date, including the payment of all Transaction Costs required to be paid in Cash, Parent shall have at least $75,000,000 of Cash.

(o) No Waitr Material Adverse Effect. Since December 31, 2017, no Waitr Material Adverse Effect has occurred.

(p) Officer's Certificate. The Administrative Agent shall have received a certificate signed by an Authorized Officer of the Borrower certifying as of the Closing Date to the matters set forth in Sections 3.1(n), (o), (s) and (t).

(q) USA Patriot Act. No later than two Business Days in advance of the Closing Date, the Administrative Agent shall have received all documentation and other information reasonably requested by the Lender at least 10 days in advance of the Closing Date, which documentation or other information is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(r) Funding Notice. Administrative Agent shall have received at least one Business Date prior to the Closing Date a fully executed and delivered Funding Notice.

(s) Representations and Warranties. Other than the representation and warranty contained in Section 4.9, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of the Closing Date (except for those representations and warranties that are conditioned by materiality, which shall be true and correct in all respects) on and as of the Closing Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which shall have been true and correct in all respects) on and as of such earlier date.

(t) No Default or Event of Default. As of the Closing Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default.

Each Lender, by delivering its signature page to this Agreement on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Required Lenders or Lenders, as applicable on the Closing Date.

Notwithstanding anything herein to the contrary, Requested, Inc., a Delaware corporation, shall not be required to (i) become a Guarantor hereunder, (ii) become a Grantor under the Pledge and Security Agreement or (iii) have its' Capital Stock pledged as Collateral pursuant to the Pledge and Security Agreement, in each case, prior to the time period (and subject to the terms) set forth in Schedule 5.15.

3.2. Conditions Subsequent to the Closing Date. Borrower shall fulfill, on or before the date applicable thereto (which date can be extended in writing by the Administrative Agent in its sole discretion), each of the conditions subsequent specified in Section 5.15.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce Agents and Lenders to enter into this Agreement and to make the Credit Extension to be made thereby, each Credit Party represents and warrants to each Agent and Lender, on the Closing Date, that the following statements are true and correct:

4.1. Organization; Requisite Power and Authority; Qualification. Each of Holdings and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2. Capital Stock and Ownership. The Capital Stock of each of Parent and its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Parent or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of Parent or any of its Subsidiaries outstanding which upon conversion or exchange would require, the issuance by Parent or any of its Subsidiaries of any additional membership interests or other Capital Stock of Parent or any of its Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of Parent or any of its Subsidiaries. Schedule 4.2 correctly sets forth the ownership interest of Parent and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date both before and after giving effect to the Transactions.

4.3. Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

4.4. No Conflict. The execution, delivery and performance by each Credit Party of the Credit Documents to which it is a party and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate any provision of (i) any law or any governmental rule or regulation applicable to Holdings or any of its Subsidiaries, (ii) any of the Organizational Documents of Holdings or any of its Subsidiaries, or (iii) any order, judgment or decree of any court or other agency of government binding on Holdings or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Holdings or any of its Subsidiaries; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Holdings or any of its Subsidiaries (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, on behalf of Secured Parties); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of Holdings or any of its Subsidiaries, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders except, with respect to any conflict, breach, violation, contravention, approval or consent referred to in clauses (a)(i), (a)(iii), (b), (c), or (d), to the extent that such conflict, breach, violation, contravention or failure to obtain such approval or consent, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

4.5. Governmental Consents. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date.

4.6. **Binding Obligation**. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7. **Historical Financial Statements**. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Closing Date, neither Target nor any of its Subsidiaries has any contingent liability or liability for taxes, long term lease or unusual forward or long term commitment that is not reflected in the Historical Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets or financial condition of Target and any of its Subsidiaries taken as a whole.

4.8. **Projections**. On and as of the Closing Date, the Projections of Parent and its Subsidiaries for the period of Fiscal Year 2019 through and including Fiscal Year 2023, including monthly projections for each month during the Fiscal Year in which the Closing Date takes place, (the "**Projections**") are based on good faith estimates and assumptions made by the management of Parent; provided, the Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and that the differences may be material and are intended to be considered forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995; provided further, as of the Closing Date, management of Parent believed that the Projections were reasonable and attainable.

4.9. **No Material Adverse Change**. Since December 31, 2017, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

4.10. **Security Interest in Collateral**. Subject to Section 5.15, the provisions of this Agreement, the Pledge and Security Agreement and the other Credit Documents are effective to create in favor of the Collateral Agent, for its benefit and the benefit of the Secured Parties, a valid and enforceable security interest in and Lien upon the Collateral purported to be pledged, charged, mortgaged or assigned by it thereunder and described therein, subject, in the case of enforceability, to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and fair dealing, and upon the making of such filings and the taking of such other actions required to be taken hereby or by the applicable Credit Documents, such security interest and Lien shall constitute a fully perfected first priority Lien upon such right, title and interest of the Credit Parties, in and to such Collateral (to the extent such Liens are required to be perfected under the terms of the Credit Documents), to the extent that such security interest and Lien can be perfected by such filings, actions, giving of notice and possession, subject only to Permitted Liens.

4.11. Adverse Proceedings, etc. Except as set forth in Schedule 4.11, there are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.12. Payment of Taxes. Except as otherwise permitted under Section 5.3, all tax returns and reports of Holdings and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Holdings and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. Holdings knows of no proposed tax assessment against Holdings or any of its Subsidiaries which is not being actively contested by Holdings or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.13. Properties.

(a) Title. Each of Holdings and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good title to (in the case of all other personal property), all of their respective properties and assets reflected in their respective Historical Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.9. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Closing Date, Schedule 4.13 contains a true, accurate and complete list of (i) all Real Estate Assets, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and Holdings does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

4.14. Environmental Matters. Neither Holdings nor any of its Subsidiaries nor any of their respective Real Property Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law or any Environmental Claim that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law. There are and, to each of Holdings' and its Subsidiaries' knowledge, have been, no conditions, occurrences, or events which could reasonably be expected to form the basis of an Environmental Claim against Holdings or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries nor, to any Credit Party's knowledge, any predecessor of Holdings or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Real Property Facility, and none of Holdings' or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent that could reasonably be expected to have a Material Adverse Effect. Holdings and each of its Subsidiaries is and has been in compliance with all Environmental Laws, including obtaining and maintaining all Governmental Authorizations required by any applicable Environmental Law except such non-compliance or Governmental Authorizations that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. There has been no Release of any Hazardous Materials at, on, under or from any property currently owned, or to each of Holdings' and its Subsidiaries' knowledge, at, on, under or from any property currently leased or operated or formerly owned, leased or operated by Holdings or any of its Subsidiaries that, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect.

4.15. No Defaults. Neither Holdings nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

4.16. Material Contracts. All Material Contracts are in full force and effect and no defaults currently exist thereunder.

4.17. Governmental Regulation. Neither Holdings nor any of its Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 2005, the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Neither Holdings nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18. Margin Stock. Neither Holdings nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Term Loan made to such Credit Party will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

4.19. Employee Matters. Neither Holdings nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against Holdings or any of its Subsidiaries, or to the best knowledge of Holdings and Borrower, threatened in writing against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against Holdings or any of its Subsidiaries or to the best knowledge of Holdings and Borrower, threatened in writing against any of them, (b) no strike or work stoppage in existence or threatened involving Holdings or any of its Subsidiaries, and (c) to the best knowledge of Holdings and Borrower, no union representation question existing with respect to the employees of Holdings or any of its Subsidiaries and, to the best knowledge of Holdings and Borrower, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.

4.20. Employee Benefit Plans. Holdings, each of its Subsidiaries and each of their respective ERISA Affiliates are in material compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan, except (with respect to any matter specified in the preceding clause, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by Holdings, any of its Subsidiaries or any of their ERISA Affiliates. No ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates. The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by Holdings, any of its Subsidiaries or any of their ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of Holdings, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero. Holdings, each of its Subsidiaries and each of their ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.

4.21. Certain Fees. No broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated hereby (it being understood and agreed that this representation does not cover or apply to any underwriting or financial advisory fees payable in connection with the Transactions).

4.22. Solvency. Each Credit Party is and, after the consummation of the Transactions to occur on the Closing Date and the incurrence of indebtedness and obligations in connection therewith, will be, Solvent.

4.23. [Reserved].

4.24. Compliance with Statutes, etc. Each of Holdings and its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property (including compliance with all applicable Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any Governmental Authorizations issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of Holdings or any of its Subsidiaries), except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.25. Disclosure. No representation or warranty of any Credit Party contained in any Credit Document or in any other documents, certificates or written statements furnished to Lenders by or on behalf of Holdings or any of its Subsidiaries for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact (known to Holdings or Borrower, in the case of any document not furnished by either of them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Holdings or Borrower to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to Holdings or Borrower (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

4.26. Intellectual Property. Except as set forth on Schedule 4.26, each Credit Party and each Subsidiary of each Credit Party owns, or is licensed to use, all Intellectual Property necessary to conduct its business as currently conducted except for such Intellectual Property the failure of which to own or license would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Credit Party, except as set forth on Schedule 4.26, (a) the conduct and operations of the businesses of each Credit Party and each Subsidiary of each Credit Party does not infringe, misappropriate, dilute or violate any Intellectual Property owned by any other Person and (b) no other Person has contested any right, title or interest of any Credit Party or any Subsidiary of any Credit Party in, or relating to, any Intellectual Property, other than, in each case, as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.27. Deposit Accounts and Other Accounts. Schedule 4.27 lists all banks and other financial institutions, securities intermediary or commodity intermediary at which any Credit Party maintains deposit, securities, commodities or similar accounts as of the Closing Date, and such Schedule correctly identifies the name, address and any other relevant contact information reasonably requested by the Collateral Agent with respect to each depository or intermediary, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

4.28. Foreign Assets Control Regulations; Anti-Money Laundering; Anti-Corruption Practices.

(a) Each Credit Party and each Subsidiary of each Credit Party is in compliance in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations ("**Sanctions**") as administered by the U.S. Treasury Department's Office of Foreign Assets Control ("**OFAC**") and the U.S. State Department. No Credit Party and no Subsidiary of a Credit Party (i) is a Person on the list of the Specially Designated Nationals and Blocked Persons (the "**SDN List**"), (ii) is a person who is otherwise the target of U.S. economic sanctions laws such that a U.S. person cannot deal or otherwise engage in business transactions with such person, (iii) is a Person organized or resident in a country or territory subject to comprehensive Sanctions (a "**Sanctioned Country**"), or (iv) is owned or controlled by (including by virtue of such Person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any Person on the SDN List or a government of a Sanctioned Country such that the entry into, or performance under, this Agreement or any other Credit Document would be prohibited by U.S. law.

(b) Each Credit Party and each Subsidiary of each Credit Party is in compliance with all laws related to terrorism or is in compliance in all material respects with all laws related to money laundering including: (i) all applicable requirements of the Currency and Foreign Transactions Reporting Act of 1970 (31 U.S.C. 5311 et. seq., (the Bank Secrecy Act)), as amended by Title III of the USA Patriot Act, (ii) the Trading with the Enemy Act, (iii) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (66 Fed. Reg. 49079), any other enabling legislation, executive order or regulations issued pursuant or relating thereto and (iv) other applicable federal or state laws relating to "**know your customer**" or anti-money laundering rules and regulations. No action, suit or proceeding by or before any court or Governmental Authority with respect to compliance with such anti-money laundering laws is pending or threatened in writing against any Credit Party or any Subsidiary of a Credit Party.

(c) Each Credit Party and each Subsidiary of each Credit Party is in compliance in all material respects with all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act of 1977 ("**FCPA**") and the U.K. Bribery Act 2010 ("**Anti-Corruption Laws**"). No Credit Party nor any Subsidiary of a Credit Party, nor, to the knowledge of any Credit Party, any director, officer, agent, employee, or other person acting on behalf of a Credit Party or any Subsidiary of a Credit Party, has taken any action, directly or indirectly, that would result in a violation of applicable Anti-Corruption Laws. Each Credit Party and each Subsidiary of a Credit Party has instituted and will continue to maintain policies and procedures designed to promote compliance with applicable Anti-Corruption Laws.

SECTION 5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that until the Facility Termination Date, each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 5.

5.1. Financial Statements and Other Reports. Unless otherwise provided below, Holdings will deliver to Administrative Agent and Lenders:

(a) [Reserved];

(b) Quarterly Financial Statements. As soon as available, and in any event within 45 days after the end of the first three Fiscal Quarters of each Fiscal Year, the consolidated balance sheets of Parent and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of Parent and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a Financial Officer Certification with respect thereto;

(c) Annual Financial Statements. As soon as available, and in any event within 90 days after the end of each Fiscal Year, (i) the consolidated balance sheets of Parent and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Parent and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, in reasonable detail, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of Moss Adams, LLP or other independent certified public accountants of recognized national standing selected by Holdings, and reasonably satisfactory to Administrative Agent (which report shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Parent and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards in the United States of America;

(d) Compliance Certificate. Together with each delivery of financial statements of Parent and its Subsidiaries pursuant to Sections 5.1(b) and 5.1(c), a duly executed and completed Compliance Certificate;

(e) [Reserved];

(f) Notice of Default. Promptly upon any officer of Holdings or Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Holdings or Borrower with respect thereto; or (ii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Borrower has taken, is taking and proposes to take with respect thereto;

(g) Notice of Litigation. Promptly upon any officer of Holdings or Borrower obtaining knowledge of (i) the institution of any Adverse Proceeding not previously disclosed in writing by Borrower to Lenders, or (ii) any material development in any Adverse Proceeding that, in the case of either clause (i) or (ii) could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to Holdings or Borrower to enable Lenders and their counsel to evaluate such matters (it being understood that the receipt of any privileged information in respect of such Adverse Proceeding shall be subject to the execution by Lenders of documents required, in the reasonable opinion of the applicable Credit Party, to protect attorney-work product and/or attorney-client privileges);

(h) ERISA. (i) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; (2) all notices received by Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (3) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request;

(i) Financial Plan. As soon as practicable and in any event no later than thirty days after the end of each Fiscal Year, a consolidated plan and financial forecast for such Fiscal Year and each Fiscal Year (or portion thereof) through the final maturity date of the Term Loan (a "**Financial Plan**"), including (i) a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Parent and its Subsidiaries for each such Fiscal Year, together with pro forma Compliance Certificates for each such Fiscal Year and an explanation of the assumptions on which such forecasts are based, (ii) forecasted consolidated statements of income and cash flows of Parent and its Subsidiaries for each month of each such Fiscal Year, and (iv) forecasts demonstrating adequate liquidity through the final maturity date of the Term Loan, together, in each case, with an explanation of the assumptions on which such forecasts are based all in form and substance reasonably satisfactory to Agents;

(j) Insurance Report. As soon as practicable and in any event within thirty days of the end of each Fiscal Year, a report in form and substance satisfactory to Administrative Agent outlining all material insurance coverage maintained as of the date of such report by Holdings and its Subsidiaries and all material insurance coverage planned to be maintained by Holdings and its Subsidiaries in the immediately succeeding Fiscal Year;

(k) Environmental Reports and Audits. As soon as practicable following receipt thereof, copies of all environmental audits, assessments and reports with respect to environmental matters at any Real Property Facility or which relate to the operations or any environmental liabilities or obligations of Holdings or its Subsidiaries which, in any such case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(l) Information Regarding Collateral. (a) Borrower will furnish to Collateral Agent prior written notice of any change (i) in any Credit Party's legal name, (ii) in any Credit Party's type of organization or (iii) in any Credit Party's jurisdiction of organization. Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral and for the Collateral at all times following such change to have a valid, legal and perfected security interest as contemplated in the Collateral Documents. Borrower also agrees promptly to notify Collateral Agent if any material portion of the Collateral is damaged or destroyed;

(m) Annual Collateral Verification. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.1(c), Borrower shall deliver to Collateral Agent an Officer's Certificate (i) either confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section and/or identifying such changes, or (ii) certifying that all UCC financing statements (including fixtures filings, as applicable) or other appropriate filings, recordings or registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified in the Perfection Certificate or pursuant to clause (i) above to the extent necessary to protect and perfect the security interests under the Collateral Documents for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period);

(n) [Reserved];

(o) Other Information. (A) Promptly upon their becoming available, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by Parent or any Subsidiary of Parent to its security holders acting in such capacity, (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by Parent or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, (iii) all press releases and other statements made available generally by Parent or any of its Subsidiaries to the public concerning material developments in the business of Parent or any of its Subsidiaries, and (B) such other information and data with respect to Parent or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent.

Documents required to be delivered pursuant to Section 5.1 may be delivered electronically and if so delivered, shall be deemed to have been delivered (a) on the date on which the Borrower posts such documents, or provides a link thereto on its website on the Internet at the website address or (b) on the date which such documents are filed for public availability on the Securities and Exchange Commission's Electronic Data Gathering and Retrieval System (EDGAR).

5.2. Existence. Except as otherwise permitted under Section 6.9, each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, no Credit Party or any of its Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if such Person's board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Lenders.

5.3. Payment of Taxes and Claims. Each Credit Party will, and will cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Holdings or any of its Subsidiaries). In addition, Borrower agrees to pay to the relevant Governmental Authority or, at the option of the Administrative Agent, timely reimburse it for the payment of, any current or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (including, without limitation, mortgage recording taxes, transfer taxes and similar fees) imposed by any Governmental Authority that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement.

5.4. Maintenance of Properties. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Holdings and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

5.5. Insurance. Holdings will maintain or cause to be maintained, with financially sound and reputable insurers, (i) business interruption insurance reasonably satisfactory to Administrative Agent, and (ii) casualty insurance, such public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Holdings and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, Holdings will maintain or cause to be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) name Collateral Agent, on behalf of Lenders as an additional insured thereunder as its interests may appear, and (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names Collateral Agent, on behalf of Secured Parties as the loss payee thereunder and, to the extent available, provides for at least thirty days' prior written notice to Collateral Agent of any modification or cancellation of such policy.

5.6. Inspections. Each Credit Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by any Agent or any Lender to visit and inspect any of the properties of any Credit Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested; provided, however, in the absence of an Event of Default, such inspections, visits and discussions shall be limited to three times per Fiscal Year.

5.7. Lenders Meetings. Holdings and Borrower will, upon the request of Administrative Agent or Required Lenders, participate in a meeting of Administrative Agent and Lenders once during each Fiscal Year to be held at Borrower's corporate offices (or at such other location as may be agreed to by Borrower and Administrative Agent) at such time as may be agreed to by Borrower and Administrative Agent.

5.8. Compliance with Laws. Each Credit Party will comply, and shall cause each of its Subsidiaries to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.9. Environmental.

(a) Environmental Disclosure. Holdings will deliver to Administrative Agent and Lenders:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Holdings or any of its Subsidiaries or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at any Real Property Facility or with respect to any Environmental Claims;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (1) any Release required to be reported to any federal, state or local governmental or regulatory agency under any Environmental Laws, (2) any remedial, corrective, abatement or other response action taken by Holdings or any other Person in response to (A) the Release or presence of any Hazardous Materials that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (B) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, and (3) Holdings or Borrower's discovery of any occurrence, event or condition on any real property adjoining or in the vicinity of any Real Property Facility that could cause such Real Property Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by Holdings or any of its Subsidiaries, a copy of any and all written communications with respect to (1) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (2) any Release required to be reported to any Governmental Authority, and (3) any request for information from any Governmental Authority that suggests such agency is investigating whether Holdings or any of its Subsidiaries may be a potentially responsible party for the Release of any Hazardous Materials; and

(iv) prompt written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by Holdings or any of its Subsidiaries that could reasonably be expected to (A) expose Holdings or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (B) affect the ability of Holdings or any of its Subsidiaries to maintain in full force and effect all material Governmental Authorizations required under any Environmental Laws for their respective operations and (2) any proposed action to be taken by Holdings or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject Holdings or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws that could reasonably be expected to have a Material Adverse Effect.

(v) with reasonable promptness, such other documents as from time to time may be reasonably requested by Administrative Agent related to any matters disclosed pursuant to this Section 5.9(a).

(b) Hazardous Materials Activities, Etc. Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) comply with Environmental Law and to cure any violation of or non-compliance with Environmental Laws by such Credit Party or its Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.10. Subsidiaries. In the event that any Person becomes a Domestic Subsidiary of Holdings, Holdings shall (a) within 30 days (or such longer period agreed by the Administrative Agent) with such Person becoming a Domestic Subsidiary cause such Domestic Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Administrative Agent and Collateral Agent a Joinder Agreement, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as are similar to those described in Sections 3.1(b), 3.1(f), 3.1(g), 3.1(h), 3.1(k) (to the extent reasonably requested by the Administrative Agent). In the event that any Person becomes a Foreign Subsidiary of Holdings, and the ownership interests of such Foreign Subsidiary are owned by Holdings or by any Domestic Subsidiary thereof, Holdings shall, or shall cause such Domestic Subsidiary to, deliver, all such documents, instruments, agreements, and certificates as are similar to those described in Section 3.1(b), and Holdings shall take, or shall cause such Domestic Subsidiary to take, all of the actions necessary to grant and to perfect a First Priority Lien in favor of Collateral Agent, for the benefit of Secured Parties, under the Pledge and Security Agreement in 65% of the ownership interests in such Foreign Subsidiary. With respect to each such Subsidiary, Borrower shall, concurrently with delivery of the joinder documentation referenced above, send to Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Borrower, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of Borrower; provided, such written notice shall be deemed to supplement Schedule 4.1 and 4.2 for all purposes hereof.

5.11. Additional Material Real Estate Assets.

(a) In the event that any Credit Party acquires a Material Real Estate Asset after the Closing Date, within 90 days (or such longer period agreed to by the Administrative Agent) of acquiring such Material Real Estate Asset, shall take all such actions and execute and deliver, or cause to be executed and delivered, all such mortgages, documents, instruments, agreements, opinions and certificates similar to those described in Section 3.1(h) and 5.11(b) with respect to each such Material Real Estate Asset that Collateral Agent shall reasonably request to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in such Material Real Estate Assets.

(b) In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and perfected First Priority security interest in any Material Real Estate Assets, the relevant Credit Party shall deliver to Administrative Agent and Collateral Agent:

(i) fully executed and notarized Mortgages, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering such Material Real Estate Asset;

(ii) an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in each state in which such Material Real Estate Asset is located with respect to the enforceability of the form(s) of Mortgages to be recorded in such state and such other matters as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent;

(iii) (a) ALTA mortgagee title insurance policies or unconditional commitments therefor issued by one or more title companies reasonably satisfactory to Collateral Agent with respect to such Material Real Estate Asset (each, a "**Title Policy**"), in amounts not less than the fair market value of such Material Real Estate Asset, together with a title report issued by a title company with respect thereto, dated not more than thirty days prior to execution of the Mortgage and copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to Collateral Agent and (B) evidence satisfactory to Collateral Agent that such Credit Party has paid to the title company or to the appropriate Governmental Authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording any Mortgages for each Material Real Estate Asset in the appropriate real estate records;

(iv) evidence of flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, in form and substance reasonably satisfactory to Collateral Agent;

(v) ALTA surveys of such Material Real Estate Asset, certified to Collateral Agent and dated not more than thirty days prior to execution of the relevant Mortgage; and

(vi) reports and other information, in form, scope and substance satisfactory to Administrative Agent, regarding environmental matters relating to such Material Real Estate Asset, which reports shall include a Phase I report for each Material Real Estate Asset specified by Administrative Agent.

(c) In addition to the foregoing, Borrower shall, at the reasonable request of Required Lenders, deliver, from time to time, to Administrative Agent such appraisals as are required by law or regulation of Material Real Estate Assets with respect to which Collateral Agent has been granted a Lien.

5.12. Landlord Collateral Access Agreements. Each Credit Party shall use commercially reasonable efforts to obtain a Landlord Collateral Access Agreement within 60 days of the Closing Date or acquisition thereof, from the lessor of each leased property with respect to (to the extent leased) Borrower's headquarters and each location where any Collateral having a fair market value in excess of $1,000,000 is stored or where material books and records are located, which agreement shall be reasonably satisfactory in form and substance to Administrative Agent.

5.13. Further Assurances. At any time or from time to time upon the request of Administrative Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents, including providing Lenders with any information reasonably requested pursuant to Section 10.21. In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Administrative Agent or Collateral Agent may reasonably request from time to time to ensure that the Obligations are guarantied by the Guarantors and are secured by the Collateral.

5.14. Miscellaneous Business Covenants. Unless otherwise consented to by Agents and Required Lenders:

(a) Cash Management Systems. Holdings and its Subsidiaries shall establish and maintain cash management systems reasonably acceptable to Administrative Agent, including, without limitation, with respect to blocked account arrangements.

(b) Communication with Accountants. Each Credit Party executing this Agreement authorizes Administrative Agent to communicate directly with such Credit Party's independent certified public accountants and authorizes and shall instruct those accountants, in each case subject to such accountants' customary policies and procedures, to communicate with Administrative Agent and each Lender information relating to any Credit Party with respect to the business, results of operations and financial condition of any Credit Party; provided however, that Administrative Agent shall provide such Credit Party with notice at least three (3) Business Days prior to first initiating any such communication and such Credit Party and any of its Subsidiaries shall be given the right to be present at or participate in such discussions and communications.

5.15. Post-Closing Matters. Borrower shall, and shall cause each of the Credit Parties to, satisfy the requirements set forth on Schedule 5.15 on or before the date specified for such requirement or such later date to be determined by the Agent.

SECTION 6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that until the Facility Termination Date, such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

6.1. Indebtedness. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness of any Guarantor Subsidiary to Borrower or to any other Guarantor Subsidiary, or of Borrower to any Guarantor Subsidiary; provided, (i) all such Indebtedness shall be evidenced by promissory notes and all such notes shall be subject to a First Priority Lien pursuant to the Pledge and Security Agreement and (ii) all such Indebtedness shall be unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement that in any such case, is reasonably satisfactory to Administrative Agent;

(c) Subordinated Indebtedness and refinancings and extensions of any such Subordinated Indebtedness in accordance in all respects with the requirements in respect thereof set forth in Section 6.5(iii);

(d) Indebtedness incurred by Holdings or any of its Subsidiaries arising from agreements providing for indemnification or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of Borrower or any such Subsidiary pursuant to such agreements, in each case, in the ordinary course of business;

(e) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business;

(f) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(g) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Holdings and its Subsidiaries;

(h) guaranties by Borrower of Indebtedness of a Guarantor Subsidiary or guaranties by a Subsidiary of Borrower of Indebtedness of Borrower or a Guarantor Subsidiary with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1;

(i) Indebtedness described in Schedule 6.1, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement, and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof are not less favorable, taken as a whole, to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced (plus any fees and expenses and including any unfunded or available commitments), or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(j) Indebtedness in an aggregate amount not to exceed at any time $1,000,000 with respect to (x) Capital Leases and (y) purchase money Indebtedness (including any Indebtedness acquired in connection with a Permitted Acquisition); provided, in the case of clause (x), that any such Indebtedness shall be secured only by the asset subject to such Capital Lease, and, in the case of clause (y), that any such Indebtedness shall be secured only by the asset acquired in connection with the incurrence of such Indebtedness;

(k) other Indebtedness of Holdings and its Subsidiaries in an aggregate amount not to exceed at any time $5,000,000;

(l) unsecured earn-outs, deferred purchase price payments and working capital adjustments incurred in connection with Permitted Acquisitions, subject in each case to the limitations set forth in Section 6.9(e);

(m) indebtedness to a bank arising from the honoring by that bank of a check, draft or other similar instrument drawn against insufficient funds in the ordinary course of business;

(n) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(o) Indebtedness existing under any credit card or similar cash management program in an aggregate amount not to exceed at any time $500,000;

(p) Indebtedness consisting of promissory notes issued by Holdings or any of its Subsidiaries to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of equity interests of the Borrower or Holdings or Parent permitted by Section 6.5; provided, such Indebtedness shall be subordinated in right of payment to the payment in full of the Obligations pursuant to terms reasonably satisfactory to the Administrative Agent; and

(q) Indebtedness in respect of letters of credit in an aggregate principal amount not to exceed at any time $3,000,000.

6.2. Liens. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Holdings or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC of any State or under any similar recording or notice statute, except:

(a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document;

(b) Liens for Taxes (i) not yet delinquent, or (ii) not required to be paid under Section 5.3 hereof;

(c) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401 (a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the ordinary course of business (i) for amounts not yet overdue, or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of thirty days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens consisting of pledges or deposits incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness) or to secure liability to insurance carriers, so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights of way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Holdings or any of its Subsidiaries;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any cash earnest money deposits made by Holdings or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) licenses of patents, trademarks and other intellectual property rights granted by Holdings or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of the business of Borrower or such Subsidiary;

(l) Liens described in Schedule 6.2;

(m) Liens securing Capital Leases and/or purchase money Indebtedness permitted pursuant to Section 6.1(j); provided, any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness;

(n) licenses, sublicenses, leases or subleases granted to third parties in the ordinary course of business not interfering with the ordinary conduct of the business of the Credit Parties or any of their Subsidiaries in the ordinary course of business;

(o) Liens securing cash collateral for letters of credit permitted by Section 6.1(d) or (q); and

(p) additional Liens on property of the Credit Parties or any of their Subsidiaries not otherwise permitted by this Section 6.2 that secure obligations up to an aggregate amount of $1,000,000 for all such Liens at any time.

6.3. [Reserved].

6.4. No Further Negative Pledges. Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale and (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) no Credit Party nor any of its Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

6.5. Restricted Payments. No Credit Party shall, nor shall it permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Payment except that the Credit Parties may (i) make Restricted Payments to Holdings (and Holdings may make Restricted Payments to Parent) in an aggregate amount not to exceed $500,000 in any trailing twelve month period, to the extent necessary to permit Holdings or the Parent to pay general administrative costs and expenses, (ii) make Restricted Payments to Holdings (and Holdings may make Restricted Payments to Parent) to the extent necessary to permit Holdings (and, to the extent applicable, Parent) to discharge the consolidated tax liabilities of Parent and its Subsidiaries (solely to the extent such taxes are imposed with respect to the income or activities of Borrower and its Subsidiaries), (iii) pay amounts permitted by the subordination terms (including, without limitation, the prepayment restrictions set forth in Section 2.7 of the Parent Convertible Notes Credit Agreement) applicable to Subordinated Indebtedness permitted hereunder and refinancings and extensions of any such Subordinated Indebtedness if the terms and conditions thereof are not less favorable, taken as a whole, to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended (it being understood that the subordination terms of any such refinanced or extended Subordinated Indebtedness shall be on substantially identical terms as the Indebtedness so refinanced or otherwise reasonably satisfactory to the Administrative Agent), and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended, in each case, so long as any such Credit Party applies the amount of any such Restricted Payment for such purpose; provided, any such refinanced or extended Subordinated Indebtedness shall not (x) include Indebtedness of any obligor that was not an obligor with respect to the Subordinated Indebtedness being refinanced or extended, (y) exceed in principal amount the Subordinated Indebtedness being refinanced or extended (plus any fees, premiums and expenses and including any unfunded or available commitments) or (z) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom, (iv) make Restricted Payments solely in the form of Capital Stock, (v) make Restricted Payments to other Credit Parties and (vi) so long as no Default or Event of Default shall have occurred and be continuing or shall immediately be caused thereby, Restricted Payments to Holdings, and, if applicable (but without duplication), Holdings may make Restricted Payments to Parent, the proceeds of which shall be used solely to purchase or redeem from current or former employees, members of the board of directors, managers, consultants (or their respective estates, spouses or former spouses) of Parent or Holdings, on account of the death, termination, resignation or other voluntary or involuntary cessation of such person's employment or directorship, shares of such Parent's or Holdings' equity interests or options or warrants to acquire such equity interests in an aggregate amount for all such payments not to exceed $1,000,000 in any Fiscal Year (with unused amounts in any Fiscal Year being carried over to succeeding Fiscal Years subject to a maximum of $2,500,000 in any Fiscal Year).

6.6. Restrictions on Subsidiary Distributions. Except as provided herein, no Credit Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Borrower to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Borrower or any other Subsidiary of Borrower, (b) repay or prepay any Indebtedness owed by such Subsidiary to Borrower or any other Subsidiary of Borrower, (c) make loans or advances to Borrower or any other Subsidiary of Borrower, or (d) transfer any of its property or assets to Borrower or any other Subsidiary of Borrower other than restrictions (i) in agreements evidencing purchase money Indebtedness permitted by Section 6.1(j) that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, and (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement.

6.7. Investments. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture and any Foreign Subsidiary, except:

(a) Investments in Cash and Cash Equivalents;

(b) equity Investments owned as of the Closing Date in any Subsidiary and Investments made after the Closing Date among the Borrower and/or one or more Subsidiaries that are Credit Parties;

(c) Investments (i) in any Securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors, and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of Holdings and its Subsidiaries;

(d) intercompany loans to the extent permitted under Section 6.1(b);

(e) loans and advances to employees of Holdings and its Subsidiaries (i) made in the ordinary course of business and described on Schedule 6.7, and (ii) any refinancings of such loans after the Closing Date in an aggregate amount not to exceed $100,000 in any Fiscal Year;

(f) Investments made in connection with Permitted Acquisitions permitted pursuant to Section 6.9;

(g) Investments described in Schedule 6.7;

(h) Investments of a Person (in each case, which is an Investment permitted by this Section 6.7) that is (i) acquired and becomes a Subsidiary or (ii) merged or amalgamated or consolidated into any Subsidiary, in each case, in connection with a Permitted Acquisition after the Closing Date to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition, merger, amalgamation or consolidation and were in existence on the date of such Permitted Acquisition, merger, amalgamation or consolidation; and

(i) other Investments in an aggregate amount not to exceed at any time $2,500,000.

6.8. OFAC; USA Patriot Act; Anti-Corruption Laws. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to fail to comply with the laws, regulations and executive orders referred to in Section 4.28. No Credit Party nor any Subsidiary of a Credit Party, nor any director, officer, agent, employee, or other person acting on behalf of a Credit Party or any Subsidiary of a Credit Party, will use the proceeds of the Term Loan, directly or indirectly, for any payments to any Person, including any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, or otherwise take any action, directly or indirectly, that would result in a violation of any Anti-Corruption Laws. Furthermore, the Credit Parties will not, directly or indirectly, use the proceeds of the transaction, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Affiliate, joint venture partner or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person participating in the transaction of any Sanctions.

6.9. Fundamental Changes; Disposition of Assets; Acquisitions. No Credit Party shall, nor shall it permit any of its Subsidiaries to, consummate any transaction of merger or consolidation, consummate a Division/Series Transaction, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and capital expenditures in the ordinary course of business) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Holdings may be merged with or into Borrower or any Guarantor Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Borrower or any Guarantor Subsidiary; provided, in the case of such a merger, Borrower or such Guarantor Subsidiary, as applicable shall be the continuing or surviving Person;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

(c) Asset Sales, the proceeds of which, when aggregated with the proceeds of all other Asset Sales made within the trailing twelve month period, are less than $1,000,000; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of Borrower (or similar governing body)), (2) no less than 75% thereof shall be paid in Cash, and (3) the Net Asset Sale Proceeds thereof shall be applied as required by Section 2.9(a);

(d) disposals of obsolete, surplus or worn out property;

(e) Permitted Acquisitions; provided, that the aggregate consideration paid as purchase price consideration (including, without limitation, Cash consideration, unsecured earnouts (valued at the time of the making of such Investment in accordance with GAAP) and deferred purchase price payments) does not exceed $10,000,000 in the aggregate from the Closing Date to the date of determination;

(f) Investments made in accordance with Section 6.7;

(g) dispositions of inventory or equipment in the ordinary course of business;

(h) dispositions of Cash Equivalents;

(i) dispositions of accounts receivable in the ordinary course of business (including any discount and/or forgiveness thereof) or, in the case of accounts receivable in default, in connection with the collection or compromise thereof and, in any event, not involving any securitization thereof;

(j) leases, subleases, licenses or sublicenses, in each case, in the ordinary course of business and which do not materially interfere with the business of the Credit Parties; and

(k) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims in the ordinary course of business, in each case, which do not materially interfere with the business of the Credit Parties.

provided, that, upon not less than ten (10) Business Days prior written notice to Administrative Agent, any Subsidiary of Borrower may enter into a Division/Series Transaction so long as (x) no Default or Event of Default has occurred and is continuing or would arise therefrom, (y) immediately after giving effect to such Division/Series Transaction, both (or all) the surviving Persons (and all series thereof) and any newly resulting Person (and all series thereof) remain or become, as applicable, Guarantors hereunder (to the extent the applicable Subsidiary entering into such Division/Series Transaction was originally a Guarantor), any resulting Person (and all series thereof) complies with the requirements of Section 5.10 and Section 5.13, if applicable, (for the avoidance of doubt, at the time of such Division/Series Transaction, without giving effect to any grace periods provided therein) and, after giving effect to any actions taken under Section 5.10 and Section 5.13, if applicable, both the surviving Person (and all series thereof) and any resulting Person (and all series thereof) are in compliance with the requirements of the Collateral Documents and (z) if any such Division/Series Transaction is consummated, each division or series of a Person created thereby shall be subject to all of the terms and provisions of this Agreement and the other Credit Documents, and the Liens in favor of Collateral Agent, as fully as if such Person was subject hereto and thereto prior to giving effect to such Division/Series Transaction (and the Credit Parties shall be required to ensure such division or series complies with all terms and provisions of this Agreement and the other Credit Documents as fully as if such division or series was a Subsidiary of a Credit Party), and, upon the request of the Administrative Agent, the applicable Person, division and series shall reaffirm the foregoing in writing in form and substance reasonably acceptable to Administrative Agent.

6.10. Disposal of Subsidiary Interests. Except for any sale of all of its interests in the Capital Stock of any of its Subsidiaries in compliance with the provisions of Section 6.9, no Credit Party shall, nor shall it permit any of its Subsidiaries to, (a) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify directors if required by applicable law; or (b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to another Credit Party (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify directors if required by applicable law.

6.11. Sales and Lease-Backs. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Credit Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Holdings or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Credit Party to any Person (other than Holdings or any of its Subsidiaries) in connection with such lease.

6.12. Transactions with Affiliates. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of Holdings; provided, however, that the Credit Parties and their Subsidiaries may enter into or permit to exist any such transaction if the terms of such transaction are not less favorable to Holdings or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; further, provided, that the foregoing restrictions shall not apply to (a) any transaction between Borrower and any Guarantor Subsidiary; (b) reasonable and customary fees and indemnitees paid to members of the board of directors (or similar governing body) of Holdings and its Subsidiaries; (c) compensation arrangements for officers and other employees of Holdings and its Subsidiaries entered into in the ordinary course of business; (d) transactions described in Schedule 6.12 and amendments thereof which are not materially adverse to the Lenders; (e) Indebtedness permitted by Sections 6.1(b), (h) and (p), Restricted Payments permitted by Section 6.5 and Investments permitted by Sections 6.7(b), (d), (e) and (h); (f) consummation of the Transactions; and (g) for the avoidance of doubt, fees, expenses, indemnity and expense reimbursement payable to Jefferies LLC and its Affiliates in connection with the Transactions, including pursuant to the Engagement Letters dated as of May 15, 2018 and October 10, 2018 between the Parent and Jefferies LLC. Borrower shall disclose in writing each material transaction with any Affiliate of Holdings or of any such holder to Administrative Agent; provided, however, the Borrower shall not be required to disclose in writing any transaction permitted by clauses (a), (b), (c), (f) and (g) above.

6.13. Conduct of Business. From and after the Closing Date, no Credit Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by such Credit Party on the Closing Date or any business reasonably related thereto and (ii) such other lines of business as may be consented to by the Administrative Agent and Required Lenders.

6.14. Permitted Activities of Holdings. Holdings shall not (a) incur, directly or indirectly, any Indebtedness or any other obligation or liability whatsoever other than the Indebtedness and obligations under the Related Agreements; (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than the Liens created under the Collateral Documents to which it is a party or permitted pursuant to Section 6.2; (c) engage in any business or activity or own any assets other than (i) holding 100% of the Capital Stock of Borrower; (ii) performing its obligations and activities incidental thereto under applicable laws and regulations, the Credit Documents, and to the extent not inconsistent therewith, the Related Agreements; (iii) making Restricted Payments and Investments and other actions to the extent permitted by this Agreement; (iv) the execution and delivery or, and the performance of rights and obligations under, any guarantees of leases or insurance obligations or other guarantees (including in connection with workers compensation insurance or self-insurance), in each case, to the extent permitted hereunder; (v) providing indemnification to officers and directors in the ordinary course of business and (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and the Borrower and its Subsidiaries; (d) consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person; (e) sell or otherwise dispose of any Capital Stock of any of its Subsidiaries; (f) create or acquire any Subsidiary or make or own any Investment in any Person other than Borrower; or (g) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

6.15. [Reserved].

6.16. Amendments or Waivers with Respect to Subordinated Indebtedness. No Credit Party shall, nor shall it permit any of its Subsidiaries to, amend or otherwise change the terms of any Subordinated Indebtedness, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or change is to increase the interest rate on such Subordinated Indebtedness, increase the principal amount thereof, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), change the redemption, prepayment or defeasance provisions thereof, change the subordination provisions of such Subordinated Indebtedness (or of any guaranty thereof), or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders of such Subordinated Indebtedness (or a trustee or other representative on their behalf) which would be adverse to any Credit Party or Lenders.

6.17. Fiscal Year. No Credit Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year end from December 31.

6.18. Deposit Accounts and Other Accounts. No Credit Party shall establish or maintain a deposit, securities, commodity or similar account that is not subject to a Control Agreement and no Credit Party will deposit proceeds in a deposit account which is not subject to a Control Agreement, in each case, other than (a) any payroll account so long as such payroll account is a zero balance account or is funded no earlier than the Business Day immediately prior to the date of any payroll disbursements and in an amount not exceeding the same, (b) petty cash accounts and amounts on deposit which do not exceed $200,000 in the aggregate at any one time, (c) withholding and other tax, employee benefit plan, client custodial, escrow and fiduciary accounts, (d) accounts subject to Liens in accordance with Section 6.2(o) and (e) accounts with IberiaBank serving as cash collateral for the Credit Parties' purchasing card program (such excluded accounts, "**Excluded Accounts**") as of and after the Closing Date; provided, it is agreed and understood that the Credit Parties shall have until the date that is sixty (60) days following the Closing Date or the closing date of any Permitted Acquisition, as applicable (or such later date as may be agreed to by Administrative Agent in its sole discretion) to comply with the provisions of this Section 6.18 with regard to any such accounts (other than Excluded Accounts) of the Credit Parties existing on the Closing Date or acquired in connection with any Permitted Acquisition.

6.19. Amendments to Organizational Agreements and Material Contracts. No Credit Party shall (a) amend or permit any amendments to any Credit Party's Organizational Documents; or (b) amend or permit any amendments to, or terminate or waive any provision of, any Material Contract if such amendment, termination, or waiver would be materially adverse to Administrative Agent or the Lenders.

6.20. Prepayments of Subordinated Indebtedness. No Credit Party shall, nor shall it permit any of its Affiliates to, directly or indirectly, purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Subordinated Indebtedness prior to its scheduled maturity, other than Restricted Payments permitted pursuant to Section 6.5(iii).

6.21. Minimum Liquidity Covenant. Borrower shall not permit Consolidated Liquidity to be less than $15,000,000 as of the last day of each Fiscal Quarter ending prior to the Term Loan Maturity Date.

SECTION 7. GUARANTY

7.1. Guaranty of the Obligations. Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "**Guaranteed Obligations**").

7.2. Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "**Funding Guarantor**") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "**Fair Share Contribution Amount**" with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "**Aggregate Payments**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3. Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Borrower to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Borrower's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

7.4. Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between Borrower and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Borrower or any of such other guarantors and whether or not Borrower is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or the applicable Interest Rate Agreement and Currency Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against Borrower or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents or Interest Rate Agreements and Currency Agreements; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents or any Interest Rate Agreement or Currency Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents, any of the Interest Rate Agreements or Currency Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document, such Interest Rate Agreement or Currency Agreement or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or any of the Interest Rate Agreements or Currency Agreements or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Holdings or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which Borrower may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.5. Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Beneficiary in favor of Borrower or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to gross negligence, willful misconduct or bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Interest Rate Agreements or Currency Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Borrower and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

7.6. Guarantors' Rights of Subrogation, Contribution, etc. Until the Facility Termination Date, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including without limitation (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Borrower with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Facility Termination Date, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including, without limitation, any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Borrower, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time prior to the Facility Termination Date, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.7. Subordination of Other Obligations. Any Indebtedness of Borrower or any Guarantor now or hereafter held by any Guarantor (the "**Obligee Guarantor**") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

7.8. Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until the Facility Termination Date. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

7.9. Authority of Guarantors or Borrower. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

7.10. Financial Condition of Borrower. Any Credit Extension may be made to Borrower or continued from time to time, and any Interest Rate Agreements or Currency Agreements may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of Borrower at the time of any such grant or continuation or at the time such Interest Rate Agreement or Currency Agreement is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Borrower. Each Guarantor has adequate means to obtain information from Borrower on a continuing basis concerning the financial condition of Borrower and its ability to perform its obligations under the Credit Documents and the Interest Rate Agreements and Currency Agreements, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Borrower now known or hereafter known by any Beneficiary.

7.11. Bankruptcy, etc.

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Required Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Borrower or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Borrower or any other Guarantor or by any defense which Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Borrower of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by Borrower, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

7.12. Discharge of Guaranty Upon Sale of Guarantor. If all of the Capital Stock of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale.

SECTION 8. EVENTS OF DEFAULT

8.1. Events of Default. If any one or more of the following conditions or events shall occur (each an "**Event of Default**"):

(a) Failure to Make Payments When Due. Failure by Borrower to pay (i) the principal of and premium, if any, on the Term Loan whether at stated maturity, by acceleration or otherwise; (ii) when due any installment of principal of the Term Loan, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (iii) within three (3) Business Days after the same shall become due, any interest on the Term Loan or any fee or any other amount due hereunder.

(b) Default in Other Agreements. (i) Failure of any Credit Party or any of their respective Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an individual principal amount of $1,500,000 or more or with an aggregate principal amount of $3,500,000 or more, in each case beyond any applicable grace or cure period, if any, provided therefor; or (ii) breach or default by any Credit Party or any of their respective Subsidiaries with respect to any other material term of (1) one or more items of Indebtedness in the individual or aggregate principal amounts referred to in clause (i) above, or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond any applicable grace or cure period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Section 2.3, Section 5.1(b), (c), (d), (f) or (i), Section 5.2, Section 5.5, Section 5.6, Section 5.7, Section 5.10, Section 5.11, Section 5.15 or Section 6; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other Section of this Section 8.1, and such default shall not have been remedied or waived within thirty days after the earlier of (i) an officer of such Credit Party becoming aware of such default, or (ii) receipt by Borrower of notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Parent or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Parent or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Parent or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Parent or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Parent or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Parent or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Parent or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) Parent or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of Parent or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of $1,500,000 or (ii) in the aggregate at any time an amount in excess of $3,500,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has not denied coverage) shall be entered or filed against Holdings or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party decreeing the dissolution or split up of such Credit Party and such order shall remain undischarged or unstayed for a period in excess of thirty days; or

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in liability of Holdings, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $2,000,000 during the term hereof; or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest under Section 430(k) of the Internal Revenue Code or under Section 303(k) of ERISA; or

(k) Change of Control. A Change of Control shall occur; or

(l) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any material portion of the Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (iii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party;

THEN, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence of any other Event of Default, at the request of (or with the consent of) Required Lenders, upon notice to Borrower by Administrative Agent, (A) the Commitments, if any, of each Lender having such Commitments shall immediately terminate; (B) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (I) the unpaid principal amount of and accrued interest on the Term Loan, and (II) all other Obligations; and (C) Administrative Agent may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents.

SECTION 9. AGENTS

9.1. Appointment of Agents. Luxor Capital is hereby appointed Administrative Agent and Collateral Agent hereunder and under the other Credit Documents and each Lender hereby authorizes Luxor Capital, in such capacity, to act as its agent in accordance with the terms hereof and the other Credit Documents. Agent hereby agrees to act upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Agents and Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Holdings or any of its Subsidiaries.

9.2. Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

9.3. General Immunity.

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Term Loan or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Term Loan or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by or resulting from such Agent's bad faith, gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Holdings and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.5).

9.4. Agents Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Term Loan, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Holdings or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrower for services in connection herewith and otherwise without having to account for the same to Lenders.

9.5. Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Holdings and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Holdings and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Term Loan or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Required Lenders or Lenders, as applicable on the Closing Date.

(c) Each Lender (i) represents and warrants that as of the Closing Date neither such Lender nor its Affiliates or Related Funds owns or controls, or owns or controls any Person owning or controlling, any trade debt or Indebtedness of any Credit Party other than the Obligations or any Capital Stock of any Credit Party and (ii) covenants and agrees that from and after the Closing Date neither such Lender nor its Affiliates and Related Funds shall purchase any trade debt or Indebtedness of any Credit Party other than the Obligations or Capital Stock described in clause (i) above without the prior written consent of the Administrative Agent.

9.6. Right to Indemnity. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, their Affiliates and their respective officers, partners, directors, trustees, employees and agents of each Agent (each, an "**Indemnitee Agent Party**"), to the extent that such Indemnitee Agent Party shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnitee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Indemnitee Agent Party in any way relating to or arising out of this Agreement or the other Credit Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY**; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnitee Agent Party's bad faith, gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. If any indemnity furnished to any Indemnitee Agent Party for any purpose shall, in the opinion of such Indemnitee Agent Party, be insufficient or become impaired, such Indemnitee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.7. Successor Administrative Agent and Collateral Agent.

(a) Administrative Agent and Collateral Agent may resign at any time by giving thirty days' prior written notice thereof to Lenders and Borrower. Upon any such notice of resignation, Required Lenders shall have the right, upon 15 days' prior written consent of the Borrower (such consent not to be (a) unreasonably withheld, conditioned or delayed or (b) required if an Event of Default has occurred and is continuing), to appoint a successor Administrative Agent and Collateral Agent. Upon the acceptance of any appointment as Administrative Agent and Collateral Agent hereunder by a successor Administrative Agent and Collateral Agent, that successor Administrative Agent and Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and Collateral Agent and the retiring Administrative Agent and Collateral Agent shall promptly (i) transfer to such successor Administrative Agent and Collateral Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent and Collateral Agent under the Credit Documents, and (ii) execute and deliver to such successor Administrative Agent and Collateral Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent and Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring Administrative Agent and Collateral Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's and Collateral Agent's resignation hereunder as Administrative Agent and Collateral Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent and Collateral Agent hereunder.

(b) Notwithstanding anything herein to the contrary, Administrative Agent and Collateral Agent may assign their rights and duties as Administrative Agent and Collateral Agent hereunder to an Affiliate of Luxor without the prior written consent of, or prior written notice to, Borrower or the Lenders; provided that Borrower and the Lenders may deem and treat such assigning Administrative Agent and Collateral Agent as the Administrative Agent and Collateral Agent for all purposes hereof, unless and until such assigning Administrative Agent or Collateral Agent, as the case may be, provides written notice to Borrower and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent and Collateral Agent hereunder and under the other Credit Documents.

9.8. Collateral Documents and Guaranty.

(a) Agents under Collateral Documents and Guaranty. Each Lender hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to the Guaranty, the Collateral and the Collateral Documents.

(b) Release of Collateral or Guarantors. Each Secured Party hereby consents to the release and hereby directs the Administrative Agent and Collateral Agent, as applicable, to release (or, in the case of clause (b)(ii) below, release or subordinate) the following:

(i) any Subsidiary of Borrower from its guaranty of any Obligation if all of the Capital Stock of such Subsidiary owned by any Credit Party is sold or transferred in a transaction permitted under the Credit Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to Section 5.10; and

(ii) any Lien held by Collateral Agent for the benefit of the Secured Parties against (x) any Collateral that is sold, transferred, conveyed or otherwise disposed of by a Credit Party in a transaction permitted by the Credit Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in such Collateral pursuant to Section 5.10, Section 5.11 or Section 5.13 after giving effect to such transaction have been granted, (y) any property or asset subject to a Lien permitted hereunder in reliance upon Section 6.2(m) and (z) all of the Collateral and all Credit Parties, upon (A) the occurrence of the Facility Termination Date and (B) to the extent requested by an Agent, receipt by such Agent and the Secured Parties of liability releases from the Credit Parties each in form and substance reasonably acceptable to the Administrative Agent.

(c) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, Borrower, Administrative Agent, Collateral Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent, and (ii) in the event of a foreclosure by Collateral Agent on any of the Collateral pursuant to a public or private sale, Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale.

9.9. 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 not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit 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 Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loan, the Commitments or this Agreement,

(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 Term Loan, 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 Term Loan, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loan, 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 Term Loan, 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 either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with 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 not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Term Loan, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

SECTION 10. MISCELLANEOUS

10.1. Notices. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Credit Party, Collateral Agent or Administrative Agent, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served, emailed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or email, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent. Any notice given by email shall be considered received on the next Business Day following the day transmitter sends any such notice; provided that any such notice shall not be considered received to the extent the transmitter receives any confirmation that the email was not delivered to or received by the recipient.

10.2. Expenses. The Borrower shall pay (a) all reasonable and documented out of pocket expenses incurred by the Agents and their Affiliates (including the reasonable and documented fees, out-of-pocket charges and disbursements of one primary outside legal counsel for the Agents and, if necessary or appropriate, one local counsel in each relevant jurisdiction and one regulatory counsel if reasonably required), in connection with the syndication of the Term Loans and Commitments, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents (including, without limitation, the reasonable out-of-pocket costs and expenses of the Agents' and their Affiliates' due diligence investigation), or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (b) all out of pocket expenses incurred by the Agents or any Lender (including the fees, charges and disbursements of one primary outside counsel for the Agents, one primary outside counsel to the Lenders (and, in the case of a conflict of interest, additional counsels, as appropriate) and if necessary or appropriate, of any special counsel and one local counsel in each relevant jurisdiction (and in the case of a conflict of interest, additional counsels as appropriate) and one regulatory counsel if reasonably required) in connection with the enforcement, collection or protection of their rights (A) in connection with this Agreement and the other Credit Documents, including their rights under this Section, or (B) in connection with the Term Loans issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Term Loans. Notwithstanding the foregoing, all expenses incurred by the Agents and their Affiliates in connection with the Transactions shall only be reimbursable by the Borrower up to the cap set forth in respect thereof as set forth in the Commitment Letter.

10.3. Indemnity.

(a) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Agent and Lender, their Affiliates and their respective officers, partners, directors, trustees, employees and agents of each Agent and each Lender (each, an **"Indemnitee"**), from and against any and all Indemnified Liabilities, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE**; provided, no Credit Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from (i) the bad faith, gross negligence, willful misconduct or material breach of this Agreement by any Indemnitee, as determined by a court of competent jurisdiction in a final, non-appealable order, of that Indemnitee or (ii) disputes solely among Indemnitees not involving any act or omission of any Credit Party or any of their respective Subsidiaries (other than a dispute against any Agent in their capacities as such). To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. This Section 10.3(a) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, or other liabilities arising from any non-Tax claim.

(b) To the extent permitted by applicable law, no Credit Party shall assert, and each Credit Party hereby waives, any claim against Lenders, Agents and their respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, the Term Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Holdings and Borrower hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

10.4. Set Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, each Lender and its respective Affiliates each of is hereby authorized by each Credit Party at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set-off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts (in whatever currency)) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party (in whatever currency) against and on account of the obligations and liabilities of any Credit Party to such Lender, the participations under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto and participations with any other Credit Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder, (b) the principal of or the interest on the Term Loan or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured or (c) such obligation or liability is owed to a branch or office of such Lender different from the branch or office holding such deposit or obligation or such Indebtedness.

10.5. Amendments and Waivers.

(a) Required Lenders' Consent. Subject to Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of Administrative Agent and the Required Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of the Term Loan or any Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) reduce the rate of interest on the Term Loan (other than any waiver of any increase in the interest rate applicable to the Term Loan pursuant to Section 2.6) or any fee payable hereunder;

(iv) extend the time for payment of any such interest or fees;

(v) reduce the principal amount of the Term Loan;

(vi) amend, modify, terminate or waive any provision of this Section 10.5(b) or Section 10.5(c);

(vii) amend the definition of "**Required Lenders**" or "**Pro Rata Share**"; provided, with the consent of Administrative Agent and the Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of "**Required Lenders**" or "**Pro Rata Share**" on substantially the same basis as the Term Loan Commitments and the Term Loan are included on the Closing Date;

(viii) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Credit Documents; or

(ix) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall amend, modify, terminate or waive any provision of Section 9 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent.

(d) Corrections; Liens. Notwithstanding anything to the contrary contained in this Section 10.5, Agent and Borrower may amend or modify this Agreement and any other Credit Document to (i) cure any ambiguity, omission, defect or inconsistency therein and (ii) grant a new Lien for the benefit of the Secured Parties, extend an existing Lien over additional Property for the benefit of the Secured Parties or join additional Persons as Credit Parties.

(e) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

10.6. Successors and Assigns; Participations.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. No Credit Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, Indemnitee Agent Parties under Section 9.6, Indemnitees under Section 10.3, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Term Loan listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Term Loan shall be effective, in each case, unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Register as provided in Section 10.6(e). Prior to such recordation, all amounts owed with respect to the applicable Commitment or Term Loan shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Term Loan.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Commitment or Term Loan owing to it or other Obligations (provided, however, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of the Term Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (a) of the definition of the term "**Eligible Assignee**" upon the giving of notice to Administrative Agent and the Borrower; and

(ii) to any Person meeting the criteria of clause (b) or clause (c) of the definition of the term "**Eligible Assignee**" with the consent of Administrative Agent; provided, each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than $1,000,000 (or such lesser amount as may be agreed to by Borrower and Administrative Agent or as shall constitute the aggregate amount of the Term Loan of the assigning Lender) with respect to the assignment of the Term Loan; provided, further, that the consent of Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment pursuant to this Section 10.6(c)(ii) unless an Event of Default shall have occurred and be continuing at the time of any such assignment; provided, further, that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within ten (10) Business Days after having received notice thereof.

(d) Mechanics. The assigning Lender and the assignee thereof shall execute and deliver to Administrative Agent an Assignment Agreement, together with such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to Administrative Agent pursuant to Section 2.14(c) or 2.14(d).

(e) Notice of Assignment. Upon its receipt and acceptance of a duly executed and completed Assignment Agreement, any forms, certificates or other evidence required by this Agreement in connection therewith, Administrative Agent shall record the information contained in such Assignment Agreement in the Register, shall give prompt notice thereof to Borrower and shall maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Closing Date or as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Term Loan, as the case may be; (iii) it will make or invest in, as the case may be, its Commitments or Term Loan for its own account in the ordinary course of its business and without a view to distribution of such Commitments or Term Loan within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of Term Loan or any interests therein shall at all times remain within its exclusive control); and (iv) such Lender does not own or control, or own or control any Person owning or controlling, any trade debt or Indebtedness of any Credit Party other than the Obligations or any Capital Stock of any Credit Party.

(g) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the "Effective Date" specified in the applicable Assignment Agreement: (i) the assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent such rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a "Lender" for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect the Commitment of such assignee and any Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Commitments and/or outstanding Term Loan of the assignee and/or the assigning Lender.

(h) Participations. Each Lender shall have the right at any time to sell one or more participations to any Person (other than Holdings, any of its Subsidiaries or any of its Affiliates) in all or any part of its Commitments, Term Loan or in any other Obligation. The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of the Term Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Term Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement, or (iii) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Credit Documents) supporting the Term Loan hereunder in which such participant is participating. Borrower agrees that each participant shall be entitled to the benefits of Sections 2.13 and 2.14 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (c) of this Section; provided, (i) a participant shall not be entitled to receive any greater payment under Section 2.13 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with Borrower's prior written consent, and (ii) a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.14 unless Borrower is notified of the participation sold to such participant and such participant agrees, for the benefit of Borrower, to comply with Section 2.14 as though it were a Lender. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided such Participant agrees to be subject to Section 2.12 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a 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 Term Loans under the Credit 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 or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in "registered form" within the meaning under Treas. Reg. Section 5f.103-1(c). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(i) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 10.6, any Lender may assign, pledge and/or grant a security interest in, all or any portion of its share of the Term Loan, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including, without limitation, any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided, no Lender, as between Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

10.7. Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8. Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.13, 2.14, 10.2, 10.3, 10.4, and 10.10 and the agreements of Lenders set forth in Sections 2.12, 9.3(b) and 9.6 shall survive the payment of the Term Loan and the termination hereof.

10.9. No Waiver; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Interest Rate Agreements and Currency Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10. Marshalling; Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or Administrative Agent, Collateral Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11. Severability. In case any provision in or obligation hereunder or any Note or other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.12. Obligations Several; Actions in Concert. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. Anything in this Agreement or any other Credit Document to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or any Note or otherwise with respect to the Obligations without first obtaining the prior written consent of Agent or Required Lenders (as applicable), it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and any Note or otherwise with respect to the Obligations shall be taken in concert and at the direction or with the consent of Agent or Required Lenders (as applicable).

10.13. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.14. APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

10.15. CONSENT TO JURISDICTION. (A) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO ANY CREDIT DOCUMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, OR OF THE UNITED STATES OF AMERICA SITTING IN THE SOUTHERN DISTRICT OF NEW YORK AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, BORROWER AND EACH OTHER CREDIT PARTY EXECUTING THIS AGREEMENT HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL LIMIT THE RIGHT OF AGENT TO COMMENCE ANY PROCEEDING IN THE FEDERAL OR STATE COURTS OF ANY OTHER JURISDICTION TO THE EXTENT AGENT DETERMINES THAT SUCH ACTION IS NECESSARY OR APPROPRIATE TO EXERCISE ITS RIGHTS OR REMEDIES UNDER THE CREDIT DOCUMENTS. THE PARTIES HERETO (AND, TO THE EXTENT SET FORTH IN ANY OTHER CREDIT DOCUMENT, EACH OTHER CREDIT PARTY) HEREBY IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, THAT ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH JURISDICTIONS.

(B) EACH CREDIT PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL LEGAL PROCESS, SUMMONS, NOTICES AND OTHER DOCUMENTS AND OTHER SERVICE OF PROCESS OF ANY KIND AND CONSENTS TO SUCH SERVICE IN ANY SUIT, ACTION OR PROCEEDING BROUGHT IN THE UNITED STATES WITH RESPECT TO OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH ANY CREDIT DOCUMENT BY ANY MEANS PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, INCLUDING BY THE MAILING THEREOF (BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID) TO THE ADDRESS OF BORROWER SPECIFIED HEREIN (AND SHALL BE EFFECTIVE WHEN SUCH MAILING SHALL BE EFFECTIVE, AS PROVIDED THEREIN). EACH CREDIT PARTY 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

(C) NOTHING CONTAINED IN THIS SECTION 10.15 SHALL AFFECT THE RIGHT OF AGENT OR ANY LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW OR COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY CREDIT PARTY IN ANY OTHER JURISDICTION.

10.16. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17. Confidentiality. Each Lender shall maintain the confidentiality of all Confidential Information in accordance with such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Borrower that, in any event, a Lender may make (i) disclosures of such Confidential Information to Affiliates of such Lender and to their agents and advisors (and to other persons authorized by a Lender or Agent to organize, present or disseminate such Confidential Information in connection with disclosures otherwise made in accordance with this Section 10.17; provided that such persons are advised of and agreed to be bound by this Section 10.17) on a "need to know" basis solely in connection with the transactions contemplated hereby and who are informed of the confidential nature of such Confidential Information and are or have been advised of the obligation to keep such Confidential Information confidential, (ii) disclosures of such Confidential Information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by such Lender of the Term Loan or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) in Interest Rate Agreements and Currency Agreements (provided, such counterparties and advisors are advised of and agree to be bound by the provisions of this Section 10.17), (iii) disclosure to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any Confidential Information relating to the Credit Parties received by it from any of the Agents or any Lender, (iv) disclosure to any Lender's financing sources, provided that prior to any disclosure, such financing source is informed of the confidential nature of the Confidential Information and agrees to be bound by this Section 10.17, and (v) disclosures required or requested by any Governmental Authority or representative thereof or by the NAIC or pursuant to legal or judicial process or other legal proceeding; provided, unless specifically prohibited by applicable law or court order, each Lender shall make reasonable efforts to notify Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such Governmental Authority) for disclosure of any such Confidential Information prior to disclosure of such Confidential Information. For purposes of this Section 10.17, "Confidential Information" means all information regarding Holdings, Borrower and its Subsidiaries and their respective businesses other than any such information that is publicly available to any Lender on a non-confidential basis prior to disclosure by Holdings, Borrower or any of its Subsidiaries. Notwithstanding anything to the contrary set forth herein, each party (and each of their respective employees, representatives or other agents) may disclose to any and all persons, without limitations of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other tax analyses) that are provided to any such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective Affiliates, and their and their respective Affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the federal income tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates. Notwithstanding the foregoing, on or after the Closing Date, Administrative Agent may, at its own expense issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Credit Parties)(collectively, "**Trade Announcements**"). No Credit Party shall issue any Trade Announcement except (i) disclosures required by applicable law, regulation, legal process or the rules of the Securities and Exchange Commission or (ii) with the prior approval of Administrative Agent, which such approval shall not be unreasonably withheld, conditioned or delayed.

10.18. Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Term Loan made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Term Loan made hereunder is repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Term Loan made hereunder or be refunded to Borrower. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

10.19. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic mail as a ".pdf" or ".tif" attachment shall be as effective as delivery of a manually executed counterpart hereof.

10.20. Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Borrower and Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

10.21. Patriot Act. Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the USA Patriot Act.

10.22. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, 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 Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

WAITR INC.

By: /s/ Christopher Meaux
Name: Christopher Meaux
Title: Chief Executive Officer

WAITR INTERMEDIATE HOLDINGS, LLC

By: /s/ Steven Scheinthal
Name: Steven Scheinthal
Title: President and Secretary

LUXOR CAPITAL GROUP, LP,
as Administrative Agent, Lead Arranger and Collateral Agent

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

LUXOR CAPITAL, LLC,
as the Lender

By: Luxor Capital Group, LP,
its Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

[*Signature Page to Credit and Guaranty Agreement*]

APPENDIX A
TO CREDIT AND GUARANTY AGREEMENT

Lender	Term Loan Commitment	Pro Rata Share
Luxor Capital, LLC	$ 25,000,000.00	100.0%
Total	**$ 25,000,000.00**	**100%**

APPENDIX B
TO CREDIT AND GUARANTY AGREEMENT

Notice Addresses

If to any Credit Party:

1510 West Loop South
Houston, Texas 77027
Attention: General Counsel

and

Waitr Inc.
844 Ryan Street, Suite 300
Lake Charles, LA 70601
Attention: Chief Executive Officer

in each case, with a copy to:

Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
Attention: Joel Rubinstein

and

Cara Stone, LLP
650 Poydras Street, Suite 1130
New Orleans, LA 70130
Attention: Mark Graffagnini

LUXOR CAPITAL GROUP, LP
as Administrative Agent, Collateral Agent and
Lead Arranger

Luxor Capital Group, LP
1114 Avenue of the Americas, 28th Floor
New York, New York 10036
Attention: Legal
Telecopier: (212) 763-8001

in each case, with a copy to:

Sidley Austin LLP
2021 McKinney Avenue
Suite 2000
Dallas, Texas 75201
Attention: Christopher Gleason

APPENDIX B-2

Exhibit 10.4

Execution Version

PLEDGE AND SECURITY AGREEMENT

dated as of November 15, 2018

among

WAITR INC.

and

Each Other Grantor
From Time to Time Party Hereto

and

LUXOR CAPITAL GROUP, LP
as Collateral Agent

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

ANNEXES AND SCHEDULES

PLEDGE AND SECURITY AGREEMENT, dated as of November 15, 2018, by Waitr Inc., a Delaware corporation ("Borrower") and each of the other entities listed on the signature pages hereof or that becomes a party hereto pursuant to Section 7.6 (together with Borrower, the "Grantors" and each, a "Grantor"), in favor of Luxor Capital Group, LP ("Luxor Capital"), as administrative agent (in such capacity, "Administrative Agent") and collateral agent (in such capacity, "Collateral Agent") for the Lenders and each other Secured Party (each as defined in the Credit Agreement referred to below).

WITNESSETH:

WHEREAS, pursuant to the Credit and Guaranty Agreement dated as of November 15, 2018 (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement") by and among Borrower, the other Credit Parties party thereto, Luxor Capital, as Administrative Agent and Collateral Agent, and the other financial institutions party thereto, the Lenders have severally agreed to make an extension of credit to Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, each Grantor will derive substantial direct and indirect benefits from the making of the extension of credit under the Credit Agreement; and

WHEREAS, it is a condition precedent to the obligation of the Lenders to make their respective extension of credit to Borrower under the Credit Agreement that the Grantors shall have executed and delivered this Agreement to Collateral Agent;

NOW, THEREFORE, in consideration of the premises and to induce the Lenders and Administrative Agent to enter into the Credit Agreement and to induce the Lenders to make their respective extension of credit to Borrower thereunder, each Grantor hereby agrees with Collateral Agent as follows:

ARTICLE I

DEFINED TERMS

Section 1.1 Definitions. (a) Capitalized terms used herein without definition are used as defined in the Credit Agreement.

(b) The following terms have the meanings given to them in the UCC and terms used herein without definition that are defined in the UCC have the meanings given to them in the UCC (such meanings to be equally applicable to both the singular and plural forms of the terms defined): "account", "account debtor", "as-extracted collateral", "certificated security", "chattel paper", "commercial tort claim", "commodity contract", "deposit account", "electronic chattel paper", "equipment", "farm products", "fixture", "general intangible", "goods", "health-care-insurance receivable", "instruments", "inventory", "investment property", "letter-of-credit right", "proceeds", "record", "securities account", "security", "supporting obligation" and "tangible chattel paper".

(c) The following terms shall have the following meanings:

"Agreement" means this Pledge and Security Agreement.

"Applicable IP Office" means the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency within or outside the United States.

"Cash Collateral Account" means a deposit account or securities account subject, in each instance, to a Control Agreement.

"Collateral" has the meaning specified in Section 2.1.

"Controlled Securities Account" means each securities account (including all financial assets held therein and all certificates and instruments, if any, representing or evidencing such financial assets) that is the subject of an effective Control Agreement.

"Excluded Equity" means any voting stock in excess of 65% of the outstanding voting stock of any Foreign Subsidiary, which, pursuant to the terms of the Credit Agreement, is not required to guaranty the Obligations. For the purposes of this definition, "voting stock" means, with respect to any issuer, the issued and outstanding shares of each class of Capital Stock of such issuer entitled to vote (within the meaning of Treasury Regulations § 1.956-2(c)(2)).

"Excluded Property" means, collectively, (i) Excluded Equity, (ii) any permit or license or any Contractual Obligation entered into by any Grantor (A) that prohibits or requires the consent of any Person other than a Credit Party and its Affiliates which has not been obtained as a condition to the creation by such Grantor of a Lien on any right, title or interest in such permit, license or Contractual Obligation or any Capital Stock related thereto, (B) to the extent the creation of a Lien thereon by such Grantor would result in the abandonment, invalidation or unenforceability of any right, title or interest of such Grantor in any such permit, license, or Contractual Obligation or (C) to the extent that any requirement of Law applicable thereto prohibits the creation of a Lien thereon, but only, (1) in each case, to the extent not entered into in anticipation of the Closing Date or such acquisition and except, in each case, to the extent that term in such contract providing for such prohibition purports to prohibit the granting of a security interest over all assets of such Credit Party or any other Credit Party and (2) with respect to the prohibition in (A) and (C), to the extent, and for as long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other requirement of Law, (iii) Property owned by any Grantor that is subject to a purchase money Lien or a Capital Lease permitted under the Credit Agreement if the Contractual Obligation pursuant to which such Lien is granted (or in the document providing for such Capital Lease) prohibits or requires the consent of any Person other than the Borrower and its Affiliates which has not been obtained as a condition to the creation of any other Lien on such equipment, (iv) any "intent to use" Trademark applications for which a statement of use has not been filed and accepted with the U.S. Patent and Trademark Office (but only until such statement is filed and accepted with the U.S. Patent and Trademark Office), (v) assets located outside the United States or assets that require action under the law of any non-U.S. jurisdiction to create or perfect a security interest in such assets under such non-U.S. jurisdiction, including any intellectual property registered in any non-U.S. jurisdiction if the creation or perfection of pledges of, or security interests in, any property or assets would reasonably be expected to result in material adverse tax consequences to Holdings and its Subsidiaries, as reasonably determined by the Borrower, (vi) assets of and equity interests in any Person (other than a wholly owned Subsidiary) to the extent a security interest is not permitted to be granted by the terms of such Person's organizational documents or joint venture documents, (vii) motor vehicles and other assets subject to certificates of title except to the extent a security interest therein may be perfected by the filing of a UCC financing statement and (viii) particular assets if, and for so long as, in each case, reasonably agreed by the Collateral Agent and the Borrower, the cost of creating or perfecting such pledges or security interests in such assets exceed the practical benefits to be obtained by the Lenders therefrom; provided, however, "Excluded Property" shall not include any proceeds, products, substitutions or replacements of Excluded Property (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property).

"Internet Domain Name" means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to registered Internet domain names.

"Material Intellectual Property" means Intellectual Property that is owned by or licensed to a Grantor and material to the conduct of any Grantor's business.

"Permits" means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other Contractual Obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Pledged Certificated Stock" means all certificated securities and any other Capital Stock of any Person evidenced by a certificate, instrument or other similar document (as defined in the UCC), in each case owned by any Grantor, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including all Capital Stock listed on Schedule 4. Pledged Certificated Stock excludes any Excluded Property and any Cash Equivalents that are not held in Controlled Securities Accounts to the extent permitted by Section 4.10 hereof.

"Pledged Collateral" means, collectively, the Pledged Stock and the Pledged Debt Instruments.

"Pledged Debt Instruments" means all right, title and interest of any Grantor in instruments evidencing any Indebtedness owed to such Grantor or other obligations owed to such Grantor, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including all Indebtedness described on Schedule 4, issued by the obligors named therein. Pledged Debt Instruments excludes any Cash Equivalents that are not held in Controlled Securities Accounts to the extent permitted by Section 4.10 hereof.

"Pledged Investment Property" means any investment property of any Grantor, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, other than any Pledged Stock or Pledged Debt Instruments. Pledged Investment Property excludes any Cash Equivalents that are not held in Controlled Securities Accounts to the extent permitted by Section 4.10 hereof.

"Pledged Stock" means all Pledged Certificated Stock and all Pledged Uncertificated Stock.

"Pledged Uncertificated Stock" means any Capital Stock of any Person that is not Pledged Certificated Stock, including all right, title and interest of any Grantor as a limited or general partner in any partnership not constituting Pledged Certificated Stock or as a member of any limited liability company, all right, title and interest of any Grantor in, to and under any Organization Document of any partnership or limited liability company to which it is a party, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including in each case those interests set forth on Schedule 4, to the extent such interests are not certificated. Pledged Uncertificated Stock excludes any Excluded Property and any Cash Equivalents that are not held in Controlled Securities Accounts to the extent permitted by Section 4.10 hereof.

"Related Persons" means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

"Secured Obligations" has the meaning specified in Section 2.2.

"UCC" means the Uniform Commercial Code as from time to time in effect in the State of New York; provided, however, that, in the event that, by reason of mandatory provisions of any applicable requirement of Law, any of the attachment, perfection or priority of Collateral Agent's or any other Secured Party's security interest in any Collateral is governed by the Uniform Commercial Code of a jurisdiction other than the State of New York, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of the definitions related to or otherwise used in such provisions.

Section 1.2 Certain Other Terms.

(a) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. References herein to an Annex, Schedule, Article, Section or clause refer to the appropriate Annex or Schedule to, or Article, Section or clause in this Agreement. Where the context requires, provisions relating to any Collateral when used in relation to a Grantor shall refer to such Grantor's Collateral or any relevant part thereof.

(b) Other Interpretive Provisions.

(i) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto.

(ii) The Agreement. The words "hereof", "herein", "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(iii) Certain Common Terms. The term "including" is not limiting and means "including without limitation."

(iv) Performance; Time. Whenever any performance obligation hereunder (other than a payment obligation) shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including." If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, unless otherwise specified or expressly limited herein, such provision shall be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(v) Contracts. Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Credit Documents, shall be deemed to include all subsequent amendments, thereto, restatements and substitutions thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Credit Document.

(vi) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

ARTICLE II

GRANT OF SECURITY INTEREST

Section 2.1 Collateral. For the purposes of this Agreement, all of the following property now owned or at any time hereafter acquired by a Grantor or in which a Grantor now has or at any time in the future may acquire any right, title or interests is collectively referred to as the "Collateral":

(a) all accounts, chattel paper, deposit accounts, documents (as defined in the UCC), equipment, general intangibles, instruments, inventory, investment property, letter of credit rights and any supporting obligations related to any of the foregoing;

(b) the commercial tort claims described on Schedule 1 and on any supplement thereto received by Collateral Agent pursuant to Section 4.9;

(c) all books and records pertaining to the other property described in this Section 2.1;

(d) all property of such Grantor held by any Secured Party, including all property of every description, in the custody of or in transit to such Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such Grantor or as to which such Grantor may have any right or power, including but not limited to cash;

(e) all other goods (including but not limited to fixtures) and personal property of such Grantor, whether tangible or intangible and wherever located; and

(f) to the extent not otherwise included, all proceeds of the foregoing.

Section 2.2 Grant of Security Interest in Collateral. Each Grantor, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations (the "Secured Obligations"), hereby mortgages, pledges and hypothecates to Collateral Agent for the benefit of the Secured Parties, and grants to Collateral Agent for the benefit of the Secured Parties a Lien on and security interest in, all of its right, title and interest in, to and under the Collateral of such Grantor; provided, however, notwithstanding the foregoing, no Lien or security interest is hereby granted on any Excluded Property and the term "Collateral" (and any component term thereof) shall not include such assets constituting Excluded Property; provided, further, that if and when any property shall cease to be Excluded Property, a Lien on and security interest in such property shall be deemed granted therein and the term "Collateral" (and any component term thereof) shall include such assets. Each Grantor hereby represents and warrants that the Excluded Property, when taken as a whole, is not material to the business operations or financial condition of the Grantors, taken as a whole.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

To induce the Lenders and each Agent to enter into the Credit Documents, each Grantor hereby represents and warrants each of the following to Collateral Agent, the Lenders and the other Secured Parties:

Section 3.1 Title; No Other Liens. Except for the Lien granted to Collateral Agent for the benefit of the Secured Parties pursuant to this Agreement and other Permitted Liens under any Credit Document (including Section 3.2), such Grantor owns each item of the Collateral free and clear of any and all Liens or claims of others. Such Grantor (a) is the record and beneficial owner of the Collateral pledged by it hereunder constituting instruments or certificates and (b) has rights in or the power to transfer each other item of Collateral in which a Lien is granted by it hereunder, free and clear of any other Lien (other than Permitted Liens).

Section 3.2 Perfection and Priority. The security interest granted pursuant to this Agreement constitutes a valid and continuing perfected security interest in favor of Collateral Agent for the benefit of the Secured Parties in all Collateral subject, for the following Collateral, to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions which as of the Closing Date are specified on Schedule 2 (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Collateral Agent in completed and duly authorized form), (ii) with respect to any deposit account, the execution of Control Agreements to the extent required by the Credit Agreement, (iii) in the case of all United States registered Copyrights and Copyright applications, United States federal Trademarks registrations and applications, and United States issued Patents and Patent applications for which UCC filings are insufficient, all appropriate filings having been made with the United States Copyright Office or the United States Patent and Trademark Office, as applicable, (iv) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a Contractual Obligation granting control to Collateral Agent over such letter-of-credit rights and (v) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Collateral Agent over such electronic chattel paper. Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens having priority over Collateral Agent's Lien by operation of law upon (i) in the case of all Pledged Certificated Stock, Pledged Debt Instruments and Pledged Investment Property, the delivery thereof to Collateral Agent of such Pledged Certificated Stock, Pledged Debt Instruments and Pledged Investment Property consisting of instruments and certificates, in each case properly endorsed for transfer to Collateral Agent or in blank, (ii) in the case of all Pledged Investment Property not in certificated form, the execution of Control Agreements with respect to such investment property and (iii) in the case of all other instruments and tangible chattel paper that are not Pledged Certificated Stock, Pledged Debt Instruments or Pledged Investment Property, the delivery thereof to Collateral Agent of such instruments and tangible chattel paper. Except as set forth in this Section 3.2, or otherwise permitted in the Credit Agreement or this Agreement, all actions by each Grantor necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

Section 3.3 Locations of Inventory, Equipment and Books and Records. As of the Closing Date, such Grantor's inventory and equipment (other than inventory or equipment in transit, out for repair or in possession of employees, in each case, in the ordinary course of business) and books and records concerning the Collateral are kept at the locations listed on Schedule 3, as updated from time to time pursuant to Section 4.2.

Section 3.4 Pledged Collateral. (a) The Pledged Stock pledged by such Grantor hereunder (a) as of the Closing Date, is listed on Schedule 4 and constitutes that percentage of the issued and outstanding equity of all classes of each issuer thereof as set forth on Schedule 4, (b) has been duly authorized, validly issued and is fully paid and non-assessable (other than Pledged Stock in limited liability companies and partnerships) and (c) constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

(b) As of the Closing Date, all Pledged Collateral (other than Pledged Uncertificated Stock) and all Pledged Investment Property consisting of instruments and certificates has been delivered to Collateral Agent in accordance with Section 4.3(a).

(c) Subject to Section 5.3, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall be entitled to exercise all of the rights of the Grantor granting the security interest in any Pledged Stock, and a transferee or assignee of such Pledged Stock shall become a holder of such Pledged Stock to the same extent as such Grantor and be entitled to participate in the management of the issuer of such Pledged Stock and, upon the transfer of the entire interest of such Grantor, such Grantor shall, by operation of law, cease to be a holder of such Pledged Stock.

Section 3.5 Instruments and Tangible Chattel Paper Formerly Accounts. No amount payable to such Grantor under or in connection with any account is evidenced by any instrument or tangible chattel paper that has not been delivered to Collateral Agent, properly endorsed for transfer, to the extent delivery is required by Section 4.6(a).

Section 3.6 Intellectual Property.

(a) Schedule 5 sets forth as of the Closing Date and hereafter as required by Section 4.7 a true and complete list of the following Intellectual Property such Grantor owns, licenses or otherwise has the right to use: (i) Intellectual Property that is registered or subject to applications for registration by any Grantor, (ii) Internet Domain Names and (iii) Material Intellectual Property and material Software and (iii) any IP Licenses or other rights (including franchises) granted by the Grantor with respect thereto.

(b) On the Closing Date, all Material Intellectual Property owned by such Grantor is in full force and effect, subsisting, unexpired and, to such Grantor's knowledge, valid and enforceable and no Material Intellectual Property has been abandoned. Except as set forth on Schedule 5 hereto, to such Grantor's knowledge, no breach or default of any material IP License shall be caused by any of the following, and none of the following shall limit or impair the ownership, use, validity or enforceability of, or any rights of such Grantor in, any Material Intellectual Property: (i) the consummation of the transactions contemplated by any Credit Document or (ii) any holding, decision, judgment or order rendered by any Governmental Authority. Except as set forth on Schedule 5 hereto, there are no pending (or, to the knowledge of such Grantor, threatened) actions, investigations, suits, proceedings, audits, claims, demands, orders or disputes challenging the ownership, use, validity, enforceability of, or such Grantor's rights in, any Material Intellectual Property of such Grantor (other than office actions issued in the ordinary course of prosecution of any pending applications for patents or applications for registration of other Intellectual Property). Except as set forth on Schedule 5 hereto, to such Grantor's knowledge, no Person has been or is infringing, misappropriating, diluting, violating or otherwise impairing any Material Intellectual Property of such Grantor. Such Grantor, and to such Grantor's knowledge each other party thereto, is not in material breach or default of any material IP License.

Section 3.7 Commercial Tort Claims. The only commercial tort claims of any Grantor existing on the Closing Date (regardless of whether the amount, defendant or other material facts can be determined and regardless of whether such commercial tort claim has been asserted, threatened or has otherwise been made known to the obligee thereof or whether litigation has been commenced for such claims) are those listed on Schedule 1, which sets forth such information separately for each Grantor.

Section 3.8 Specific Collateral. None of the Collateral is, or is proceeds or products of, farm products, as-extracted collateral, health-care-insurance receivables or timber to be cut.

Section 3.9 Enforcement. No Permit, notice to or filing with any Governmental Authority or any other Person or any consent from any Person is required for the exercise by Collateral Agent of its rights (including voting rights) provided for in this Agreement or the enforcement of remedies in respect of the Collateral pursuant to this Agreement, including the transfer of any Collateral, except as may be required in connection with the disposition of any portion of the Pledged Collateral by laws affecting the offering and sale of securities generally or any approvals that may be required to be obtained from any bailees or landlords to collect the Collateral.

ARTICLE IV

COVENANTS

Each Grantor agrees with Collateral Agent to the following, until the Facility Termination Date:

Section 4.1 Maintenance of Perfected Security Interest; Further Documentation and Consents. (a) Generally. Such Grantor shall (i) not use or knowingly permit any Collateral to be used unlawfully or in violation of any provision of any Credit Document or any policy of insurance covering the Collateral, and (ii) not enter into any Contractual Obligation or undertaking restricting the right or ability of such Grantor or Collateral Agent to sell, assign, convey or transfer any Collateral if such restriction would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) Subject to Section 4.1(g), such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 3.2 and shall defend such security interest and such priority against the claims and demands of all Persons (other than the holders of Permitted Liens), subject to the rights of such Grantor under the Credit Documents to dispose of the Collateral and Liens as permitted by, or otherwise in accordance with, the terms, conditions and limitations of, the Credit Agreement or any other Credit Document.

(c) Such Grantor shall furnish to Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other documents in connection with the Collateral as Collateral Agent may reasonably request, which requests shall be made no more frequently than once per calendar quarter (with such statement to be delivered no earlier than concurrently with the Compliance Certificate in connection with the financial statements delivered pursuant to Section 5.1(c) of the Credit Agreement), except after the occurrence and during the continuance of an Event of Default, all in reasonable detail and in form and substance reasonably satisfactory to Collateral Agent.

(d) At any time and from time to time, upon the written request of Collateral Agent, such Grantor shall, for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, (i) promptly and duly execute and deliver, and have recorded, such further documents, including an authorization to file (or, as applicable, the filing) of any financing statement or amendment under the UCC (or other filings under similar requirements of Law) in effect in any jurisdiction with respect to the security interest created hereby and (ii) take such further action as Collateral Agent may reasonably request, including (A) using its commercially reasonable efforts to secure all approvals necessary or appropriate for the assignment to or for the benefit of Collateral Agent of any Contractual Obligation, including any IP License, held by such Grantor and to enforce the security interests granted hereunder and (B) executing and delivering any Control Agreements with respect to deposit accounts and securities accounts (other than Excluded Accounts).

(e) Without limiting such Grantor's obligations under this Agreement, Collateral Agent and Borrower shall determine, in their reasonable discretion, whether the costs of perfecting any Lien granted to Collateral Agent hereunder outweighs the benefits of perfection, and to the extent Collateral Agent and Borrower each have in any particular circumstance so determined that the costs outweigh the benefits, such Grantor shall not be required to comply with the applicable provision of this Article IV to cause such Lien to be perfected (without limiting such Grantor's other obligations under this Agreement, including pursuant to this Article IV).

Section 4.2 Changes in Locations, Name, Etc. Except upon ten (10) Business Days' prior written notice to Collateral Agent (or such shorter period as Collateral Agent may approve in its sole discretion) and delivery to Collateral Agent of (a) all documents reasonably requested by Collateral Agent to maintain the validity, perfection and priority of the security interests provided for herein and (b) if applicable, a written supplement to Schedule 3 showing any additional locations at which inventory or equipment shall be kept, such Grantor shall not do any of the following:

(i) permit any inventory or equipment with an aggregate value in excess of $350,000 to be kept at a location other than those listed on Schedule 3, except for inventory or equipment in transit, out for repair or in possession of employees, in each case, in the ordinary course of business.

(ii) change its jurisdiction of organization or its location; or

(iii) change its legal name or organizational identification number, if any, or corporation, limited liability company, partnership or other organizational structure to such an extent that any financing statement filed in connection with this Agreement would become misleading.

Section 4.3 Pledged Collateral. (a) Delivery of Pledged Collateral. Such Grantor shall (i) deliver to Collateral Agent, in suitable form for transfer and in form and substance reasonably satisfactory to Collateral Agent, (A) all Pledged Certificated Stock, (B) all Pledged Debt Instruments and (C) all certificates and instruments evidencing Pledged Investment Property and (ii) maintain all other Pledged Investment Property in a Controlled Securities Account to the extent required by the terms of this Agreement.

(b) Event of Default. During the continuance of an Event of Default, Collateral Agent shall have the right, at any time in its discretion and without notice to the Grantor, to (i) transfer to or to register in its name or in the name of its nominees any Pledged Collateral or any Pledged Investment Property and (ii) exchange any certificate or instrument representing or evidencing any Pledged Collateral or any Pledged Investment Property for certificates or instruments of smaller or larger denominations.

(c) Cash Distributions with respect to Pledged Collateral. Except as provided in Article V and subject to the limitations set forth in the Credit Agreement, such Grantor shall be entitled to receive all cash distributions paid in respect of the Pledged Collateral.

(d) Voting Rights. Except as provided in Article V, such Grantor shall be entitled to exercise all voting, consent and corporate, partnership, limited liability company and similar rights with respect to the Pledged Collateral; provided, however, that no vote shall be cast, consent given or right exercised or other action taken by such Grantor that would impair the Collateral or be inconsistent with or result in any violation of any provision of any Credit Document.

Section 4.4 Accounts.

(a) Such Grantor shall not, other than in the ordinary course of business or otherwise permitted by the Credit Documents, (i) grant any extension of the time of payment of any account, (ii) compromise or settle any account for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any account, (iv) allow any credit or discount on any account or (v) amend, supplement or modify any account in any manner that could materially adversely affect the value thereof.

(b) So long as an Event of Default is continuing, Collateral Agent shall have the right to make test verifications of the accounts of any Grantor in any manner and through any medium that it reasonably considers advisable, and such Grantor shall furnish all such assistance and information as Collateral Agent may reasonably require in connection therewith.

Section 4.5 Commodity Contracts. Such Grantor shall not have any commodity contract with value in excess of $350,000 unless subject to a Control Agreement.

Section 4.6 Delivery of Instruments and Tangible Chattel Paper and Control of Investment Property, Letter-of-Credit Rights and Electronic Chattel Paper. (a) If any individual amount in excess of $350,000 payable under or in connection with any Collateral owned by such Grantor shall be or become evidenced by an instrument or tangible chattel paper other than such instrument delivered in accordance with Section 4.3(a) and in the possession of Collateral Agent, such Grantor shall mark all such instruments and tangible chattel paper with the following legend: “This writing and the obligations evidenced or secured hereby are subject to the security interest of Luxor Capital Group, LP, as Collateral Agent” and, at the request of Collateral Agent, shall immediately deliver such instrument or tangible chattel paper to Collateral Agent, duly indorsed in a manner reasonably satisfactory to Collateral Agent.

(b) Except as otherwise permitted by this Agreement or the Credit Agreement, such Grantor shall not grant “control” (within the meaning of such term under Article 9-106 of the UCC) over any investment property to any Person other than Collateral Agent.

(c) If such Grantor is or becomes the beneficiary of a letter of credit that is (i) not a supporting obligation of any Collateral and (ii) in excess of $350,000, such Grantor shall promptly, and in any event within 2 Business Days after becoming a beneficiary, notify the Collateral Agent thereof and enter into a Contractual Obligation with the Collateral Agent, the issuer of such letter of credit or any nominated person with respect to the letter-of-credit rights under such letter of credit. Such Contractual Obligation shall assign such letter-of-credit rights to the Collateral Agent and such assignment shall be sufficient to grant control for the purposes of Section 9-107 of the UCC (or any similar section under any equivalent UCC). Such Contractual Obligation shall also direct all payments thereunder to a Cash Collateral Account. The provisions of the Contractual Obligation shall be in form and substance reasonably satisfactory to the Collateral Agent.

(d) If any aggregate amount in excess of $350,000 payable under or in connection with any Collateral owned by such Grantor shall be or become evidenced by electronic chattel paper, such Grantor shall take all steps necessary to grant Collateral Agent control of all such electronic chattel paper for the purposes of Section 9-105 of the UCC (or any similar section under any equivalent UCC) and all "transferable records" as defined in each of the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Commerce Act.

Section 4.7 Intellectual Property. (a) On the required date for delivery of any Compliance Certificate in connection with financial statements delivered pursuant to Section 5.1(c) of the Credit Agreement, if any change has been made to Schedule 5 for such Grantor, such Grantor shall provide Collateral Agent notification thereof and the short-form intellectual property agreements and assignments as described in this Section 4.7 and any other documents that Collateral Agent reasonably requests with respect thereto.

(b) Except as otherwise permitted under the Credit Agreement, such Grantor shall (and shall use commercially reasonable efforts to cause all its licensees to (1) continue to use each Trademark included in the Material Intellectual Property in order to maintain such Trademark in full force and effect with respect to each class of goods for which such Trademark is currently used, free from any claim of abandonment for non-use, (2) maintain at least the same standards of quality of products and services offered under such Trademark as are currently maintained, (3) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable requirements of Law, (4) not adopt or use any other Trademark that is confusingly similar or a colorable imitation of such Trademark unless Collateral Agent shall obtain a perfected security interest in such other Trademark pursuant to this Agreement, (5) not knowingly do any act or knowingly omit to do any act whereby such Trademark included in the Material Intellectual Property (or any goodwill associated therewith) may become destroyed, invalidated, impaired or harmed in any way and (6) not knowingly do any act or knowingly omit to do any act whereby (x) any Patent included in the Material Intellectual Property may become forfeited, misused, unenforceable, abandoned or dedicated to the public, (y) any portion of the Copyrights included in the Material Intellectual Property may become invalidated, otherwise impaired or fall into the public domain or (z) any Trade Secret that is Material Intellectual Property may become publicly available or otherwise unprotectable.

(c) Such Grantor shall notify Collateral Agent promptly if it knows, or has reason to know, that any application or registration for any Material Intellectual Property owned by such Grantor may become forfeited, misused, unenforceable, abandoned or dedicated to the public, or of any adverse determination or development regarding the validity or enforceability or such Grantor's ownership of, interest in, right to use, register, own or maintain any such Material Intellectual Property (other than office actions issued in the ordinary course of prosecution of any pending applications for patents or applications for registration of other Intellectual Property), it being agreed and understood that any Adverse Proceedings disclosed under the Credit Agreement as of the Closing Date have satisfied this requirement. Except as shall be consistent with commercially reasonable business judgment, such Grantor shall take all actions that are necessary or reasonably requested by Collateral Agent to maintain and pursue each application (and to obtain the relevant registration or recordation) owned by such Grantor and to maintain each registration and recordation included in the Material Intellectual Property.

(d) Such Grantor shall not knowingly do any act or omit to do any act reasonably expected to infringe, misappropriate, dilute, violate or otherwise impair the Intellectual Property of any other Person, it being agreed and understood that any Adverse Proceedings disclosed under the Credit Agreement as of the Closing Date shall not be deemed to be a breach of this covenant. In the event that any Material Intellectual Property of such Grantor is or has been infringed, misappropriated, violated, diluted or otherwise impaired by a third party, such Grantor shall take such action as it reasonably deems appropriate under the circumstances in response thereto, including promptly bringing suit and recovering all damages therefor, it being understood and agreed that all actions taken by any Grantor in any Adverse Proceeding disclosed under the Credit Agreement as of the Closing Date shall be deemed to be in compliance with this covenant.

(e) Such Grantor shall execute and deliver to Collateral Agent in form and substance reasonably acceptable to Collateral Agent and suitable for filing in the Applicable IP Office the short-form intellectual property security agreements in the form attached hereto as Annex 3 for all Copyrights, Trademarks, Patents and IP Licenses of such Grantor that are included in the Material Intellectual Property and that are registered with the Applicable IP Office.

Section 4.8 Notices. Subject to the terms of this Agreement, such Grantor shall promptly notify the Collateral Agent in writing of its acquisition of any material interest hereafter in property that is of a type where a security interest or lien must be or may be registered, recorded or filed under, or notice thereof given under, any federal statute or regulation.

Section 4.9 Notice of Commercial Tort Claims. Such Grantor agrees that, if it shall acquire any interest in any commercial tort claim in excess of $350,000 individually (whether from another Person or because such commercial tort claim shall have come into existence), (i) such Grantor shall promptly, but in any event, no later than concurrently with the delivery of the next Compliance Certificate required to be delivered in connection with the financial statements to be delivered pursuant to Section 5.1(c) of the Credit Agreement after which such commercial tort claim was acquired, deliver to Collateral Agent, in each case in form and substance reasonably satisfactory to Collateral Agent, a notice of the existence and nature of such commercial tort claim and a supplement to Schedule 1 containing a specific description of such commercial tort claim, (ii) Section 2.1 shall apply to such commercial tort claim and (iii) such Grantor shall execute and deliver to Collateral Agent, in each case in form and substance reasonably satisfactory to Collateral Agent, any document, and take all other action, deemed by Collateral Agent to be reasonably necessary or appropriate for Collateral Agent to obtain, on behalf of the Secured Parties, a perfected security interest having at least the priority set forth in Section 3.2 in all such commercial tort claims. Any supplement to Schedule 1 delivered pursuant to this Section 4.9 shall, after the receipt thereof by Collateral Agent, become part of Schedule 1 for all purposes hereunder other than in respect of representations and warranties made prior to the date of such receipt.

ARTICLE V

REMEDIAL PROVISIONS

Section 5.1 Code and Other Remedies. (a) UCC Remedies. During the continuance of an Event of Default, Collateral Agent may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to any Secured Obligation, all rights and remedies of a secured party under the UCC or any other applicable law.

(b) Disposition of Collateral. To the maximum extent permitted by law, without limiting the generality of the foregoing, Collateral Agent may, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), during the continuance of any Event of Default (personally or through its agents or attorneys), (i) enter upon the premises where any Collateral is located, without any obligation to pay rent, through self-help, without judicial process, without first obtaining a final judgment or giving any Grantor or any other Person notice or opportunity for a hearing on Collateral Agent's claim or action, (ii) collect, receive, appropriate and realize upon any Collateral and (iii) sell, assign, convey, transfer, grant option or options to purchase and deliver any Collateral (enter into Contractual Obligations to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Collateral Agent shall have the right, upon any such public sale or sales and, to the extent permitted by the UCC and other applicable requirements of Law, upon any such private sale, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption of any Grantor, which right or equity is hereby waived and released.

(c) Management of the Collateral. Each Grantor further agrees, that, during the continuance of any Event of Default, (i) at Collateral Agent's request, it shall assemble the Collateral and make it available to Collateral Agent at places that Collateral Agent shall reasonably select, whether at such Grantor's premises or elsewhere, (ii) without limiting the foregoing, Collateral Agent also has the right to require that each Grantor store and keep any Collateral pending further action by Collateral Agent and, while any such Collateral is so stored or kept, provide such guards and maintenance services as shall be reasonably necessary to protect the same and to preserve and maintain such Collateral in good condition, (iii) until Collateral Agent is able to sell, assign, convey or transfer any Collateral, Collateral Agent shall have the right to hold or use such Collateral to the extent that it deems appropriate for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by Collateral Agent and (iv) Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of Collateral Agent's remedies (for the benefit of the Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment. Collateral Agent shall not have any obligation to any Grantor to maintain or preserve the rights of any Grantor as against third parties with respect to any Collateral while such Collateral is in the possession of Collateral Agent.

(d) Application of Proceeds. Collateral Agent shall apply the cash proceeds of any action taken by it pursuant to this Section 5.1, after deducting all reasonable and documented costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any Collateral or in any way relating to the Collateral or the rights of Collateral Agent and any other Secured Party hereunder, including reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations, as set forth in the Credit Agreement, and only after such application and after the payment by Collateral Agent of any other amount required by any requirement of Law, need Collateral Agent account for the surplus, if any, to any Grantor.

(e) Direct Obligation. Neither Collateral Agent nor any other Secured Party shall be required to make any demand upon, or pursue or exhaust any right or remedy against, any Grantor, any other Credit Party or any other Person with respect to the payment of the Obligations or to pursue or exhaust any right or remedy with respect to any Collateral therefor or any direct or indirect guaranty thereof. All of the rights and remedies of Collateral Agent and any other Secured Party under any Credit Document shall be cumulative, may be exercised individually or concurrently and not exclusive of any other rights or remedies provided by any requirement of Law. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against Collateral Agent or any other Secured Party, any valuation, stay, appraisement, extension, redemption or similar laws and any and all rights or defenses it may have as a surety, now or hereafter existing, arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of any Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

(f) Commercially Reasonable. To the extent that applicable requirements of Law impose duties on Collateral Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is not commercially unreasonable for Collateral Agent to do any of the following:

(i) fail to incur significant costs, expenses or other liabilities reasonably deemed as such by Collateral Agent to prepare any Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition;

(ii) fail to obtain Permits, or other consents, for access to any Collateral to sell or for the collection or sale of any Collateral, or, if not required by other requirements of Law, fail to obtain Permits or other consents for the collection or disposition of any Collateral;

(iii) fail to exercise remedies against account debtors or other Persons obligated on any Collateral or to remove Liens on any Collateral or to remove any adverse claims against any Collateral;

(iv) advertise dispositions of any Collateral through publications or media of general circulation, whether or not such Collateral is of a specialized nature, or to contact other Persons, whether or not in the same business as any Grantor, for expressions of interest in acquiring any such Collateral;

(v) exercise collection remedies against account debtors and other Persons obligated on any Collateral, directly or through the use of collection agencies or other collection specialists, hire one or more professional auctioneers to assist in the disposition of any Collateral, whether or not such Collateral is of a specialized nature, or, to the extent deemed appropriate by Collateral Agent, obtain the services of other brokers, investment bankers, consultants and other professionals to assist Collateral Agent in the collection or disposition of any Collateral, or utilize internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets to dispose of any Collateral;

(vi) dispose of assets in wholesale rather than retail markets;

(vii) disclaim disposition warranties, such as title, possession or quiet enjoyment; or

(viii) purchase insurance or credit enhancements to insure Collateral Agent against risks of loss, collection or disposition of any Collateral or to provide to Collateral Agent a guaranteed return from the collection or disposition of any Collateral.

Each Grantor acknowledges that the purpose of this Section 5.1 is to provide a non-exhaustive list of actions or omissions that are commercially reasonable when exercising remedies against any Collateral and that other actions or omissions by the Secured Parties shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 5.1. Without limitation upon the foregoing, nothing contained in this Section 5.1 shall be construed to grant any rights to any Grantor or to impose any duties on Collateral Agent that would not have been granted or imposed by this Agreement or by applicable requirements of Law in the absence of this Section 5.1.

(g) IP Licenses. For the purpose of enabling Collateral Agent to exercise rights and remedies under this Section 5.1 (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, convey, transfer or grant options to purchase any Collateral) after the occurrence and during the continuance of an Event of Default, at such time as Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to Collateral Agent, for the benefit of the Secured Parties, (i) to the extent permitted under any applicable license, an irrevocable, nonexclusive, worldwide license (exercisable without payment of royalty or other compensation to such Grantor), including in such license the right to sublicense, use and practice any Intellectual Property now owned or hereafter acquired by such Grantor constituting Collateral and access to all media in which any of the licensed items may be recorded or stored and access to all Software and programs constituting Collateral used for the compilation or printout thereof and (ii) an irrevocable license (without payment of rent or other compensation to such Grantor) to use, operate and occupy all real Property owned, operated, leased, subleased or otherwise occupied by such Grantor constituting Collateral.

Section 5.2 Accounts and Payments in Respect of General Intangibles. (a) In addition to, and not in substitution for, any similar requirement in the Credit Agreement, if required by Collateral Agent at any time during the continuance of an Event of Default, any payment of accounts or payment in respect of general intangibles, when collected by any Grantor, shall be promptly (and, in any event, within 2 Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to Collateral Agent, in a Cash Collateral Account, subject to withdrawal by Collateral Agent as provided in Section 5.4. Until so turned over, such payment shall be held by such Grantor in trust for Collateral Agent, segregated from other funds of such Grantor. Each such deposit of proceeds of accounts and payments in respect of general intangibles shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(b) At any time during the continuance of an Event of Default:

(i) each Grantor shall, upon Collateral Agent's request, deliver to Collateral Agent all original and other documents evidencing, and relating to, the Contractual Obligations and transactions that gave rise to any account or any payment in respect of general intangibles, including all original orders, invoices and shipping receipts and notify account debtors that the accounts or general intangibles have been collaterally assigned to Collateral Agent and that payments in respect thereof shall be made directly to Collateral Agent;

(ii) Collateral Agent may, without notice, limit or terminate the authority of a Grantor to collect its accounts or amounts due under general intangibles or any thereof and, in its own name or in the name of others, communicate with account debtors to verify with them to Collateral Agent's satisfaction the existence, amount and terms of any account or amounts due under any general intangible. In addition, Collateral Agent may at any time enforce such Grantor's rights against such account debtors and obligors of general intangibles; and

(iii) each Grantor shall take all actions, deliver all documents and provide all information necessary or reasonably requested by Collateral Agent to ensure any Internet Domain Name is registered.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each account and each payment in respect of general intangibles to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. No Secured Party shall have any obligation or liability under any agreement giving rise to an account or a payment in respect of a general intangible by reason of or arising out of any Credit Document or the receipt by any Secured Party of any payment relating thereto, nor shall any Secured Party be obligated in any manner to perform any obligation of any Grantor under or pursuant to any agreement giving rise to an account or a payment in respect of a general intangible, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

Section 5.3 Pledged Collateral. (a) Voting Rights. During the continuance of an Event of Default, upon notice by Collateral Agent to the relevant Grantor or Grantors, Collateral Agent or its nominee may exercise (A) any voting, consent, corporate and other right pertaining to the Pledged Collateral at any meeting of shareholders, partners or members, as the case may be, of the relevant issuer or issuers of Pledged Collateral or otherwise and (B) any right of conversion, exchange and subscription and any other right, privilege or option pertaining to the Pledged Collateral as if it were the absolute owner thereof (including the right to exchange at its discretion any Pledged Collateral upon the merger, amalgamation, consolidation, reorganization, recapitalization or other fundamental change in the corporate or equivalent structure of any issuer of Pledged Stock, the right to deposit and deliver any Pledged Collateral with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as Collateral Agent may determine), all without liability except to account for property actually received by it; provided, however, that Collateral Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(b) Proxies. In order to permit Collateral Agent to exercise the voting and other consensual rights that it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions that it may be entitled to receive hereunder during the continuance of an Event of Default, (i) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to Collateral Agent all such proxies, dividend payment orders and other instruments as Collateral Agent may from time to time reasonably request and (ii) without limiting the effect of clause (i) above, such Grantor hereby grants to Collateral Agent an irrevocable proxy to vote all or any part of the Pledged Collateral and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Collateral would be entitled (including giving or withholding written consents of shareholders, partners or members, as the case may be, calling special meetings of shareholders, partners or members, as the case may be, and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Collateral on the record books of the issuer thereof) by any other person (including the issuer of such Pledged Collateral or any officer or agent thereof) and which proxy shall only terminate upon the Facility Termination Date.

(c) Authorization of Issuers. Each Grantor hereby expressly and irrevocably authorizes and instructs, without any further instructions from such Grantor, each issuer of any Pledged Collateral pledged hereunder by such Grantor to (i) comply with any instruction received by it from Collateral Agent in writing that states that an Event of Default is continuing and is otherwise in accordance with the terms of this Agreement and each Grantor agrees that such issuer shall be fully protected from liabilities to such Grantor in so complying and (ii) unless otherwise expressly permitted hereby or the Credit Agreement, pay any dividend or make any other payment with respect to the Pledged Collateral directly to Collateral Agent.

Section 5.4 Proceeds to be Turned over to and Held by Collateral Agent. Upon the occurrence and during the continuation of an Event of Default, unless otherwise expressly provided in the Credit Agreement or this Agreement, all proceeds of any Collateral received by any Grantor hereunder in cash or Cash Equivalents shall be held by such Grantor in trust for Collateral Agent and the other Secured Parties, segregated from other funds of such Grantor, and shall, promptly upon receipt by any Grantor, be turned over to Collateral Agent in the exact form received (with any necessary endorsement). All such proceeds of Collateral and any other proceeds of any Collateral received by Collateral Agent in cash or Cash Equivalents shall be held by Collateral Agent in a Cash Collateral Account. All proceeds being held by Collateral Agent in a Cash Collateral Account (or by such Grantor in trust for Collateral Agent) shall continue to be held as collateral security for the Secured Obligations and shall not constitute payment thereof until applied as provided in the Credit Agreement.

Section 5.5 Sale of Pledged Collateral. (a) Each Grantor recognizes that Collateral Agent may be unable to effect a public sale of any Pledged Collateral by reason of certain prohibitions contained in the Securities Act and applicable state or foreign securities laws or otherwise or may determine that a public sale is impracticable, not desirable or not commercially reasonable and, accordingly, may resort to one or more private sales thereof to a restricted group of purchasers that shall be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. Collateral Agent shall be under no obligation to delay a sale of any Pledged Collateral for the period of time necessary to permit the issuer thereof to register such securities for public sale under the Securities Act or under applicable state securities laws even if such issuer would agree to do so.

(b) Each Grantor agrees to use its commercially reasonable efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of any portion of the Pledged Collateral pursuant to Section 5.1 and this Section 5.5 valid and binding and in compliance with all applicable requirements of Law. Each Grantor further agrees that a breach of any covenant contained herein will cause irreparable injury to Collateral Agent and other Secured Parties, that Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained herein shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defense against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is then continuing under the Credit Agreement or that the Facility Termination Date has occurred. Each Grantor waives any and all rights of contribution or subrogation upon the sale or disposition of all or any portion of the Pledged Collateral by Collateral Agent.

Section 5.6 Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of any Collateral are insufficient to pay the Secured Obligations and the fees and disbursements of any attorney employed by Collateral Agent or any other Secured Party to collect such deficiency.

ARTICLE VI

COLLATERAL AGENT

Section 6.1 Collateral Agent's Appointment as Attorney-in-Fact. (a) Each Grantor hereby irrevocably constitutes and appoints Collateral Agent and any Related Person thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of the Credit Documents, to take any appropriate action and to execute any document or instrument that may be necessary or desirable to accomplish the purposes of the Credit Documents, and, without limiting the generality of the foregoing, each Grantor hereby gives Collateral Agent and its Related Persons the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any of the following (in the case of licensed Intellectual Property, subject to the terms, conditions and limitations of any contract or agreement to which any such Grantor is a party with respect to such Collateral or any part thereof) when an Event of Default shall be continuing:

(i) in the name of such Grantor, in its own name or otherwise, take possession of and indorse and collect any check, draft, note, acceptance or other instrument for the payment of moneys due under any account or general intangible or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Collateral Agent for the purpose of collecting any such moneys due under any account or general intangible or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property owned by or licensed to the Grantors constituting Collateral, execute, deliver and have recorded any document that Collateral Agent may request to evidence, effect, publicize or record Collateral Agent's security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against any Collateral, effect any repair or pay any insurance called for by the terms of the Credit Agreement (including all or any part of the premiums therefor and the costs thereof);

(iv) execute, in connection with any sale provided for in Section 5.1 or Section 5.5, any document to effect or otherwise necessary or appropriate in relation to evidence the sale of any Collateral; or

(v) (A) direct any party liable for any payment under any Collateral to make payment of any moneys due or to become due thereunder directly to Collateral Agent or as Collateral Agent shall direct, (B) ask or demand for, and collect and receive payment of and receipt for, any moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral, (C) sign and indorse any invoice, freight or express bill, bill of lading, storage or warehouse receipt, draft against debtors, assignment, verification, notice and other document in connection with any Collateral, (D) commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect any Collateral and to enforce any other right in respect of any Collateral, (E) defend any actions, suits, proceedings, audits, claims, demands, orders or disputes brought against such Grantor with respect to any Collateral, (F) settle, compromise or adjust any such actions, suits, proceedings, audits, claims, demands, orders or disputes and, in connection therewith, give such discharges or releases as Collateral Agent may deem appropriate, (G) assign any Intellectual Property owned by the Grantors or, to the extent permitted under the applicable agreement, any IP Licenses of the Grantors throughout the world on such terms and conditions and in such manner as Collateral Agent shall in its sole discretion determine (in the case of licensed Intellectual Property, subject to the terms, conditions and limitations of any IP License to which the Grantor is a party with respect to Collateral or any part thereof), including the execution and filing of any document necessary to effectuate or record such assignment and (H) generally, sell, assign, convey, transfer or grant a Lien on, make any Contractual Obligation with respect to and otherwise deal with, any Collateral as fully and completely as though Collateral Agent were the absolute owner thereof for all purposes and do, at Collateral Agent's option, at any time or from time to time, all acts and things that Collateral Agent deems necessary to protect, preserve or realize upon any Collateral and the Secured Parties' security interests therein and to effect the intent of the Credit Documents, all as fully and effectively as such Grantor might do.

(vi) If any Grantor fails to perform or comply with any Contractual Obligation contained herein, Collateral Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such Contractual Obligation.

(b) The reasonable and documented out-of-pocket expenses of Collateral Agent incurred in connection with actions undertaken as provided in this Section 6.1, together with interest thereon at a rate set forth in, and in accordance with, Section 2.6 of the Credit Agreement, from the date of payment by the Collateral Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to Collateral Agent on demand.

(c) Each Grantor hereby ratifies, to the maximum extent permitted by applicable law, all that said attorneys shall lawfully do or cause to be done by virtue of this Section 6.1. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released (or, if earlier, with respect to any particular Collateral, until termination of Collateral Agent's security interest with respect thereto as provided in Section 7.2).

Section 6.2 Authorization to File Financing Statements. Each Grantor authorizes Collateral Agent and its Related Persons, at any time and from time to time, to file or record financing statements, amendments thereto, and other filing or recording documents or instruments with respect to any Collateral in such form and in such offices as Collateral Agent reasonably determines appropriate to perfect, or continue or maintain perfection of, the security interests of Collateral Agent under this Agreement, and such financing statements and amendments may describe the Collateral covered thereby as "all assets of the debtor" or words of similar import. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction. Such Grantor also hereby ratifies its authorization for Collateral Agent to have filed any initial financing statement or amendment thereto under the UCC (or other similar laws) in effect in any jurisdiction if filed prior to the date hereof.

Section 6.3 Authority of Collateral Agent. Each Grantor acknowledges that the rights and responsibilities of Collateral Agent under this Agreement with respect to any action taken by Collateral Agent or the exercise or non-exercise by Collateral Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between Collateral Agent and the other Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between Collateral Agent and the Grantors, Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation or entitlement to make any inquiry respecting such authority.

Section 6.4 Duty; Obligations and Liabilities. (a) Duty of Collateral Agent. Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Collateral Agent deals with similar property for its own account. The powers conferred on Collateral Agent hereunder are solely to protect Collateral Agent's interest in the Collateral and shall not impose any duty upon Collateral Agent to exercise any such powers. Collateral Agent shall be accountable only for amounts that it receives as a result of the exercise of such powers, and neither it nor any of its Related Persons shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. In addition, Collateral Agent shall not be liable or responsible for any loss or damage to any Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehousemen, carrier, forwarding agency, consignee or other bailee if such Person has been selected by Collateral Agent in good faith.

(b) Obligations and Liabilities with respect to Collateral. No Secured Party and no Related Person thereof shall be liable for failure to demand, collect or realize upon any Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to any Collateral. The powers conferred on Collateral Agent hereunder shall not impose any duty upon any other Secured Party to exercise any such powers. The other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their respective officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Reinstatement. Each Grantor agrees that, if any payment made by any Credit Party or other Person and applied to the Secured Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or the proceeds of any Collateral are required to be returned by any Secured Party to such Credit Party, its estate, trustee, receiver or any other party, including any Grantor, under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, any Lien or other Collateral securing such liability shall be and remain in full force and effect, as fully as if such payment had never been made. If, prior to any of the foregoing, any Lien or other Collateral securing such Grantor's liability hereunder shall have been released or terminated by virtue of the foregoing, such Lien, other Collateral or provision shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of any such Grantor in respect of any Lien or other Collateral securing such obligation or the amount of such payment.

Section 7.2 Release of Collateral. (a) At the time provided in subsection 9.8(b)(ii)(z) of the Credit Agreement, the Collateral shall automatically be released from the Lien created hereby and this Agreement and all obligations (other than those expressly stated to survive such termination) of Collateral Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors. Each Grantor is hereby authorized to file UCC amendments at such time evidencing the termination of the Liens so released. At the request of any Grantor following any such termination, Collateral Agent shall promptly deliver to such Grantor any Collateral of such Grantor held by Collateral Agent hereunder and promptly execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

(b) If Collateral Agent shall be directed or permitted pursuant to Section 9.8(b) of the Credit Agreement to release any Lien or any Collateral, such Collateral shall be released from the Lien created hereby to the extent provided under, and subject to the terms and conditions set forth in, such subsection. In connection therewith, Collateral Agent, at the request of any Grantor, shall execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such release, including delivery of any such released Collateral held by or in the possession of Collateral Agent.

(c) At the time provided in Section 9.8(b) of the Credit Agreement (and subject to the conditions therein) and at the request of Borrower, a Grantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Grantor shall be sold to any Person that is not an Affiliate of Holdings, a Borrower and the Subsidiaries of a Borrower in a transaction permitted by the Credit Documents.

Section 7.3 Independent Obligations. The obligations of each Grantor hereunder are independent of and separate from the Secured Obligations and the Guaranteed Obligations. If any Secured Obligation or Guaranteed Obligation is not paid when due (after giving effect to any grace period), or upon the occurrence and during the continuance of any Event of Default, Collateral Agent may, at its sole election, proceed directly and at once, without notice, against any Grantor and any Collateral to collect and recover the full amount of any Secured Obligation or Guaranteed Obligation then due, without first proceeding against any other Grantor, any other Credit Party or any other Collateral and without first joining any other Grantor or any other Credit Party in any proceeding.

Section 7.4 No Waiver by Course of Conduct. No Secured Party shall by any act (except by a written instrument pursuant to Section 7.5), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that such Secured Party would otherwise have on any future occasion.

Section 7.5 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.5 of the Credit Agreement; provided, however, that annexes to this Agreement may be supplemented (but no existing provisions may be modified and no Collateral may be released) through Pledge Amendments and Joinder Agreements, in substantially the form of Annex 1 and Annex 2, respectively, in each case duly executed by Collateral Agent and each Grantor directly affected thereby.

Section 7.6 Additional Grantors; Additional Pledged Collateral. (a) Joinder Agreements. If, at the option of a Borrower or as required pursuant to Section 5.10 of the Credit Agreement, a Borrower shall cause any Subsidiary that is not a Grantor to become a Grantor hereunder, such Subsidiary shall execute and deliver to Collateral Agent a Joinder Agreement substantially in the form of Annex 2 and shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Grantor party hereto on the Closing Date.

(b) Pledge Amendments. To the extent any Pledged Collateral has not been delivered as of the Closing Date, such Grantor shall deliver a pledge amendment duly executed by the Grantor in substantially the form of Annex 1 (each, a "Pledge Amendment"). Such Grantor authorizes Collateral Agent to attach each Pledge Amendment to this Agreement.

Section 7.7 Notices. All notices, requests and demands to or upon Collateral Agent or any Grantor hereunder shall be effected in the manner provided for in Section 10.1 of the Credit Agreement; provided, however, that any such notice, request or demand to or upon any Grantor shall be addressed to Borrower's notice address set forth in Appendix B to the Credit Agreement.

Section 7.8 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of each Secured Party and their successors and assigns; provided, however, that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of Collateral Agent.

Section 7.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic mail as a ".pdf" or ".tif" attachment shall be as effective as delivery of a manually executed counterpart hereof.

Section 7.10 Severability. Any provision of this Agreement being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of this Agreement or any part of such provision in any other jurisdiction.

Section 7.11 Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

Section 7.12 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THE TRANSACTION HEREUNDER, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 7.12 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

EACH GRANTOR AGREES TO BE BOUND BY THE PROVISIONS OF SECTION 10.8 OF THE CREDIT AGREEMENT.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the undersigned has caused this Pledge and Security Agreement to be duly executed and delivered as of the date first above written.

WAITR INC., a Delaware corporation, as a Grantor

By: /s/ Christopher Meaux
Name: Christopher Meaux
Title: Chief Executive Officer

WAITR INTERMEDIATE HOLDINGS, LLC, a Delaware limited liability company, as a Grantor

By: /s/ Steven Scheinthal
Name: Steven Scheinthal
Title: President and Secretary

ACCEPTED AND AGREED
as of the date first above written:

LUXOR CAPITAL GROUP, LP, as Collateral Agent

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

ANNEX 1
TO
PLEDGE AND SECURITY AGREEMENT

FORM OF PLEDGE AMENDMENT

This Pledge Amendment, dated as of _____ __, 20__, is delivered pursuant to Section 7.6 of the Pledge and Security Agreement, dated as of November 15, 2018, by Waitr Inc., a Delaware corporation ("Borrower"), the undersigned Grantor and the other Affiliates of Borrower from time to time party thereto as Grantors in favor of Luxor Capital Group, LP, as Collateral Agent for the Secured Parties referred to therein (as such agreement may be amended, restated, supplemented and/or otherwise modified from time to time, the "Pledge and Security Agreement"). Capitalized terms used herein without definition are used as defined in the Pledge and Security Agreement.

The undersigned hereby agrees that this Pledge Amendment may be attached to the Pledge and Security Agreement and that the Pledged Collateral listed on Annex 1-A to this Pledge Amendment shall be and become part of the Collateral referred to in the Pledge and Security Agreement and shall secure all Obligations of the undersigned.

The undersigned hereby represents and warrants that each of the representations and warranties contained in Sections 3.1, 3.2, 3.4 and 3.9 of the Pledge and Security Agreement is true and correct as of the date hereof as if made on and as of such date.

[GRANTOR]

By: _____
Name:
Title:

PLEDGED STOCK

ISSUER	CLASS	CERTIFICATE NO(S).	PAR VALUE	NUMBER OF SHARES, UNITS OR INTERESTS

PLEDGED DEBT INSTRUMENTS

ISSUER	DESCRIPTION OF DEBT	CERTIFICATE NO(S).	FINAL MATURITY	PRINCIPAL AMOUNT

ACKNOWLEDGED AND AGREED
as of the date first above written:

LUXOR CAPITAL GROUP, LP, as Collateral Agent

By: _____
Name:
Title:

ANNEX 2
TO
PLEDGE AND SECURITY AGREEMENT

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT, dated as of _____ __, 20__, is delivered pursuant to Section 7.6 of the Pledge and Security Agreement, dated as of November 15, 2018, by Waitr Inc., a Delaware corporation ("Borrower") and the Affiliates of Borrower from time to time party thereto as Grantors in favor of Luxor Capital Group, LP, as Collateral Agent for the Secured Parties referred to therein (as such agreement may be amended, restated, supplemented and/or otherwise modified from time to time, the "Pledge and Security Agreement"). Capitalized terms used herein without definition are used as defined in the Pledge and Security Agreement.

By executing and delivering this Joinder Agreement, the undersigned, as provided in Section 7.6 of the Pledge and Security Agreement, hereby becomes a party to the Pledge and Security Agreement as a Grantor thereunder with the same force and effect as if originally named as a Grantor therein and, without limiting the generality of the foregoing, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations of the undersigned, hereby mortgages, pledges and hypothecates to Collateral Agent for the benefit of the Secured Parties, and grants to Collateral Agent for the benefit of the Secured Parties a lien on and security interest in, all of its right, title and interest in, to and under the Collateral of the undersigned and expressly assumes all obligations and liabilities of a Grantor thereunder. The undersigned hereby agrees to be bound as a Grantor for the purposes of the Pledge and Security Agreement.

The information set forth in Annex 1-A is hereby added to the information set forth in Schedules 1 through 5 to the Pledge and Security Agreement. By acknowledging and agreeing to this Joinder Agreement, the undersigned hereby agree that this Joinder Agreement may be attached to the Pledge and Security Agreement and that the Collateral listed on Annex 1-A to this Joinder Agreement shall be and become part of the Collateral referred to in the Pledge and Security Agreement and shall secure all Secured Obligations of the undersigned.

The undersigned hereby represents and warrants that each of the representations and warranties contained in Article III of the Pledge and Security Agreement applicable to it is true and correct on and as the date hereof as if made on and as of such date.

This Joinder Agreement and the rights and obligations of the parties hereto shall be governed by, and in construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned has caused this joinder agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED
as of the date first above written:

[EACH GRANTOR PLEDGING
ADDITIONAL COLLATERAL]

By: _____
Name:
Title:

LUXOR CAPITAL GROUP, LP, as Collateral Agent

By: _____
Name:
Title:

ANNEX 3
TO
PLEDGE AND SECURITY AGREEMENT

FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT[1]

THIS [COPYRIGHT] [PATENT] [TRADEMARK] SECURITY AGREEMENT, dated as of _____ __, 20__, is made by _____ (the "Grantor"), in favor of Luxor Capital Group, LP ("Luxor Capital"), as collateral agent (in such capacity, together with its successors and permitted assigns, the "Collateral Agent") for the Lenders (as defined in the Credit Agreement referred to below) and the other Secured Parties.

WITNESSETH:

WHEREAS, pursuant to the Credit and Guaranty Agreement, dated as of November 15, 2018 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Waitr Inc., a Delaware corporation (the "Borrower"), Waitr Intermediate Holdings, LLC, a Delaware limited liability company ("Holdings"), the other Credit Parties (as defined in the Credit Agreement), the Lenders from time to time party thereto and Luxor Capital, as administrative agent and collateral agent for the Lenders, the Lenders have severally agreed to make an extension of credit to Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, in connection with the Credit Agreement, each Credit Party has executed and delivered that certain Pledge and Security Agreement, dated as of November 15, 2018 in favor of Collateral Agent for the benefit of the Secured Parties (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the "Pledge and Security Agreement"); and

WHEREAS, the Grantor is party to the Pledge and Security Agreement pursuant to which the Grantor is required to execute and deliver this [Copyright] [Patent] [Trademark] Security Agreement;

NOW, THEREFORE, in consideration of the premises and to induce the Lenders and Administrative Agent to enter into the Credit Agreement and to induce the Lenders to make their respective extension of credit to Borrower thereunder, the Grantor hereby agrees with Collateral Agent as follows:

Section 1. Defined Terms. Capitalized terms used herein without definition are used as defined in the Pledge and Security Agreement.

Section 2. Grant of Security Interest in [Copyright] [Trademark] [Patent] Collateral. The Grantor, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations of the Grantor, hereby mortgages, pledges and hypothecates to Collateral Agent for the benefit of the Secured Parties, and grants to Collateral Agent for the benefit of the Secured Parties a Lien on and security interest in, all of its right, title and interest in, to and under the following Collateral of the Grantor (the "[Copyright] [Patent] [Trademark] Collateral"):

(a) [all of its Copyrights and all IP Licenses providing for the grant by or to such Grantor of any right under any Copyright, including, without limitation, those referred to on Schedule 1 hereto;

[1] Separate agreements should be executed relating to each Grantor's respective Copyrights, Patents, and Trademarks.

(b) all renewals, reversions and extensions of the foregoing; and

(c) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

or

(a) [all of its Patents and all IP Licenses providing for the grant by or to such Grantor of any right under any Patent, including, without limitation, those referred to on Schedule 1 hereto;

(b) all reissues, reexaminations, continuations, continuations-in-part, divisionals, renewals and extensions of the foregoing; and

(c) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

or

(a) [all of its Trademarks and all IP Licenses providing for the grant by or to such Grantor of any right under any Trademark, including, without limitation, those referred to on Schedule 1 hereto;

(b) all renewals and extensions of the foregoing;

(c) all goodwill of the business connected with the use of, and symbolized by, each such Trademark; and

(d) all income, royalties, proceeds and Liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

; provided, however, that the [Copyright] [Patent] [Trademark] Collateral being assigned hereunder shall not be construed as a current assignment but rather as a security interest that provides the Secured Parties such rights as are provided to holders of security interests under applicable law.

Section 3. Pledge and Security Agreement. The security interest granted pursuant to this [Copyright] [Patent] [Trademark] Security Agreement is granted in conjunction with the security interest granted to Collateral Agent pursuant to the Pledge and Security Agreement and each Grantor hereby acknowledges and agrees that the rights and remedies of Collateral Agent with respect to the security interest in the [Copyright] [Patent] [Trademark] Collateral made and granted hereby are more fully set forth in the Pledge and Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

Section 4. Grantor Remains Liable. The Grantor hereby agrees that, anything herein to the contrary notwithstanding, the Grantor shall assume full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with their [Copyrights] [Patents] [Trademarks] and IP Licenses subject to a security interest hereunder.

Section 5. Counterparts. This [Copyright] [Patent] [Trademark] Security Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart.

Section 6. Governing Law. This [Copyright] [Patent] [Trademark] Security Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Grantor has caused this [Copyright] [Patent] [Trademark] Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,

[GRANTOR], as Grantor

By: _____
Name:
Title:

ACCEPTED AND AGREED
as of the date first above written:

LUXOR CAPITAL GROUP, LP, as Collateral Agent

By: _____
Name:
Title:

SCHEDULE I
TO
[COPYRIGHT] [PATENT] [TRADEMARK] SECURITY AGREEMENT

[Copyright] [Patent] [Trademark] Registrations

1. REGISTERED [COPYRIGHTS] [PATENTS] [TRADEMARKS]

[Include Registration Number and Date]

2. [COPYRIGHT] [PATENT] [TRADEMARK] APPLICATIONS

[Include Application Number and Date]

3. IP LICENSES

[Include complete legal description of agreement (name of agreement, parties and date)]

Exhibit 10.5

Execution Version

CREDIT AGREEMENT

dated as of November 15, 2018

among

WAITR HOLDINGS INC.
as Borrower

VARIOUS LENDERS,

and

LUXOR CAPITAL GROUP, LP
as Administrative Agent and Lead Arranger

$60,000,000 Credit Facilities

TABLE OF CONTENTS

CREDIT AGREEMENT

This **CREDIT AGREEMENT**, dated as of November 15, 2018, is entered into by and among **WAITR HOLDINGS INC.**, a Delaware corporation ("**Borrower**"), the **LENDERS** party hereto from time to time, and **LUXOR CAPITAL GROUP, LP** ("**Luxor Capital**"), as Administrative Agent (in such capacity, "**Administrative Agent**") and Lead Arranger.

RECITALS:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, Lenders have agreed to extend a Term Loan to Borrower, in an aggregate principal amount not to exceed $60,000,000, the proceeds of which will be used (i) to fund a portion of the consideration and to pay fees and expenses in connection with the closing of the Merger and (ii) to finance the working capital needs and other general corporate purposes of the Borrower (including for Permitted Acquisitions); and

WHEREAS the Term Loan will be convertible into the Borrower's Capital Stock, at the option of the holder of the Note; in accordance with the terms thereof.

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

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1. Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"**10-K**" as defined in Section 4.27.

"**Accounts**" means all "**accounts**" (as defined in the UCC) of Borrower (or, if referring to another Person, of such Person), including, without limitation, accounts, accounts receivable, monies due or to become due and obligations in any form (whether arising in connection with contracts, contract rights, instruments, general intangibles, or chattel paper), in each case whether arising out of goods sold or services rendered or from any other transaction and whether or not earned by performance, now or hereafter in existence, and all documents of title or other documents representing any of the foregoing, and all collateral security and guaranties of any kind, now or hereafter in existence, given by any Person with respect to any of the foregoing.

"**Administrative Agent**" as defined in the preamble hereto.

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Borrower or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of Borrower or any of its Subsidiaries, threatened in writing against Borrower or any of its Subsidiaries or any property of Borrower or any of its Subsidiaries.

"**Affiliate**" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means 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.

"**Aggregate Amounts Due**" as defined in Section 2.10.

"**Agreement**" means this Credit Agreement, dated as of the date first set forth above, as it may be amended, supplemented or otherwise modified from time to time.

"**Anti-Corruption Laws**" as defined in Section 4.26(c).

"**Asset Sale**" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer, license or other disposition to, or any exchange of property with, any Person (other than to or with a Subsidiary of Borrower), in one transaction or a series of transactions, of all or any part of the Borrower's or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Capital Stock of the Borrower or any of its Subsidiaries, other than inventory (or other assets) sold, licensed or leased in the ordinary course of business. For purposes of clarification, "Asset Sale" shall include (x) the sale or other disposition for value of any contracts or (y) the early termination or modification of any contract resulting in the receipt by the Borrower or any of its Subsidiaries of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification).

"**Assignment Agreement**" means an Assignment and Assumption Agreement substantially in the form of Exhibit D, with such amendments or modifications as may be approved by Administrative Agent.

"**Authorized Officer**" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its vice presidents (or the equivalent thereof), and such Person's chief financial officer or treasurer.

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

"**Bail-In Legislation**" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Benefit Plan**" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Internal Revenue Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such "employee benefit plan" or "plan".

"**Board**" as defined in Section 3.1(c)(vii).

"**Borrower**" as defined in the preamble hereto.

"**Business Day**" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person (i) as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person or (ii) as lessee which is a transaction of a type commonly known as a "synthetic lease" (i.e., a transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for Federal income tax purposes).

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

"**Cash**" means money, currency or a credit balance in any demand or deposit account; provided, however, that notwithstanding anything to the contrary contained herein, for purposes of calculating compliance with the requirements of Sections 3 and 6 hereof "Cash" shall exclude any amounts that would not be considered "cash" under GAAP.

"**Cash Equivalents**" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator), and (b) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (v) shares of any money market mutual fund that (a) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than $500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's.

"**Change of Control**" means the earliest to occur of:

(a) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act), including any group acting for the purpose of acquiring, holding or disposing of Securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act, but excluding any employee benefit plan and/or Person acting as the trustee, agent or other fiduciary or administrator therefor), other than one or more Permitted Holders, of Capital Stock representing more than the greater of (x) 35% of the total voting power of all of the outstanding voting stock of Borrower and (y) the percentage of the total voting power of all the outstanding voting stock of Borrower owned, directly or indirectly, by the Permitted Holders;

(b) Borrower ceasing to beneficially own 100% on a fully diluted basis of the economic and voting interest in the Capital Stock of Holdings; or

(c) Holdings ceasing to beneficially own 100% on a fully diluted basis of the economic and voting interest in the Capital Stock of OpCo.

"**Change of Law**" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement, or (c) compliance by any Lender 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 (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and 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 of Law, regardless of the date enacted, adopted or issued but solely to the extent the relevant increased costs or loss of yield would have been included if they had been imposed under applicable increased cost provisions and only to the extent the applicable Lender is requiring reimbursement therefor from similarly situated borrowers under comparable credit facilities (to the extent such Lender has the right to do so under its credit facilities with similarly situated borrowers).

"**Closing Date**" means November 15, 2018.

"**Commitment**" means any Term Loan Commitment.

"**Commitment Letter**" means that certain letter agreement and the term sheet attached thereto, dated as of October 2, 2018, by and among Luxor Capital, Borrower and OpCo.

"**Compliance Certificate**" means a Compliance Certificate substantially in the form of Exhibit C.

"**Consolidated Liquidity**" means, for any date an amount determined for Borrower and its Subsidiaries on a consolidated basis equal to the sum of (i) unrestricted Cash of Borrower and its Subsidiaries on hand, plus (ii) unused availability under any revolving credit facilities of Borrower and its Subsidiaries.

"**Contractual Obligation**" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"**Conversion Proceeds**" as defined in Section 2.7(b).

"**Copyrights**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any requirement of Law in or relating to copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordations thereof and all applications in connection therewith.

"**Credit and Guaranty Agreement**" means that certain Credit and Guaranty Agreement, dated as of the date hereof, by and between OpCo, Holdings, the Guarantors (as defined therein), the lenders party thereto, and Luxor Capital as administrative agent, collateral agent and lead arranger, as it may be amended, supplemented or otherwise modified from time to time.

"**Credit Document**" means any of this Agreement, the Notes, the Exchange Letter and any other document or instrument designated by Borrower and Administrative Agent as a "Credit Document".

"**Credit Extension**" means the making of a Term Loan.

"**Currency Agreement**" means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with Borrower's and its Subsidiaries' operations and not for speculative purposes.

"**Default**" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"**Default Rate**" means any interest payable pursuant to Section 2.6.

"**Director Designee**" means Jonathan Green, or any replacement nominated by Luxor Capital in accordance with Section 5.13.

"**Disqualified Preferred Stock**" shall mean any preferred stock of a Person other than Qualified Preferred Stock.

"**Division/Series Transaction**" means, with respect to the Borrower and its Subsidiaries, that any such Person (a) divides into two or more Persons (whether or not the original Borrower or Subsidiary thereof survives such division) or (b) creates, or reorganizes into, one or more series, in each case as contemplated under the laws of any jurisdiction.

"**Dollars**" and the sign "**$**" mean the lawful money of the United States of America.

"**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 delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" means (a) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans as one of its businesses, and (c) any other Person (other than a natural Person) approved by Administrative Agent.

"**Employee Benefit Plan**" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates.

"**Environmental Claim**" means any investigation, notice, notice of violation, claim, citation, complaint, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material, including the Release, cleanup, remediation, or abatement of, exposure to, or corrective or response action associated with any Hazardous Material; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all applicable foreign or domestic, federal or state (or any subdivision of either of them) laws, including the common law, statutes, ordinances, orders, rules, regulations, directives, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) the environment; (ii) the generation, use, storage, transportation, handling, Release, remediation, abatement, cleanup, or disposal of Hazardous Materials; or (iii) human safety and health, industrial hygiene, or the protection of natural resources.

"**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, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member.

"**ERISA Event**" means (i) a "reportable event" within the meaning of Section 4043(c) of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Borrower, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could give rise to the imposition on Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) of ERISA with respect to any Pension Plan.

"**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.

"**Evaluation Date**" as defined in Section 4.29.

"**Event of Default**" means each of the conditions or events set forth in Section 8.1.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"**Exchange Letter**" means that certain letter agreement, dated as of the date hereof, by and between Borrower, Administrative Agent and the Lenders party thereto.

"**Existing Indebtedness**" means Indebtedness and other obligations outstanding under (a) that certain Loan Agreement dated as of July 2, 2018 between Target and Stream Financial Services, LLC and the other Lenders (as defined therein) set forth on Schedule I thereto, as amended prior to the Closing Date, (b) the $1,500,000 convertible loan made to Borrower by Fertitta Entertainment, Inc. and (c) the Waitr Convertible Notes (as defined in the Merger Agreement) to the extent the holders thereof elect to become Waitr Cashing Out Convertible Notes (as defined in the Merger Agreement).

"**Facility Termination Date**" means the date on which the Term Loan and all other Obligations under the Credit Documents that Administrative Agent has theretofore been notified in writing by the holder of such Obligation are then due and payable have been indefeasibly paid in Cash and satisfied in full (excluding contingent Obligations as to which no claim has been asserted) or converted into Capital Stock of Borrower in accordance with the Note.

"**FATCA**" means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Internal Revenue Code.

"**FCPA**" as defined in Section 4.26(c).

"**Fee Letter**" means the fee letter agreement dated November 15, 2018 between OpCo and Administrative Agent, as may be amended from time to time.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of Borrower that such financial statements fairly present, in all material respects, the financial condition of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"**Financial Plan**" as defined in Section 5.1(i).

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of Borrower and its Subsidiaries ending on December 31 of each calendar year.

"**Funding Date**" means the date on which the Term Loan is made.

"**Funding Notice**" means a notice substantially in the form of Exhibit A.

"**GAAP**" means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"**Governmental Authority**" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"**Governmental Authorization**" means any permit, license, authorization, plan, directive, exemption, consent order or consent decree of or from any Governmental Authority.

"**Guarantor Subsidiary**" has the meaning ascribed to such term in the Credit and Guaranty Agreement.

"**Hazardous Materials**" means any chemical, material, substance, or waste that (i) is defined, classified, or identified as hazardous or toxic or as a pollutant or contaminant under Environmental Law, including any petroleum or any fraction thereof, asbestos or asbestos containing material, polychlorinated biphenyls, lead-based paint, and radon; (ii) that is otherwise regulated by or for which standards of care exist or liability may be imposed under Environmental Law; or (iii) exposure to which is prohibited, limited, or regulated by any Governmental Authority.

"**Highest Lawful Rate**" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"**Historical Financial Statements**" means as of the Closing Date, (i) the audited financial statements of Target and its Subsidiaries, for the Fiscal Year ended December 31, 2017, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Year, and (ii) for the interim period from December 31, 2017 to June 30, 2018, unaudited financial statements of Target and its Subsidiaries, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for such interim period, in the case of clauses (i) and (ii), certified by the chief financial officer of Target that they fairly present, in all material respects, the financial condition of Target and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, if applicable, to changes resulting from audit and normal year-end adjustments.

"**Holdings**" means Waitr Intermediate Holdings, LLC, a Delaware limited liability company.

"**Increased-Cost Lenders**" as defined in Section 2.14.

"**Indebtedness**" as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA and trade payables not more than 90 days past due); (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co making, discounting with recourse or sale with recourse by such Person of the obligation of another; (viii) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (ix) any liability of such Person for an obligation otherwise constituting Indebtedness of another Person through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (ix), the primary purpose or intent thereof is as described in clause (viii) above; and (x) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including, without limitation, any Interest Rate Agreement and Currency Agreement, whether entered into for hedging or speculative purposes.

"**Intellectual Property**" means all rights, title and interests in or relating to (a) intellectual property and industrial property arising under any requirement of law, including all Copyrights, Patents, Software, Trademarks, Internet Domain Names, Trade Secrets, (b) all IP Ancillary Rights relating thereto and (c) IP Licenses.

"**Internet Domain Name**" means all right, title and interest (and all related IP Ancillary Rights) arising under any requirement of Law in or relating to internet domain names.

"**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), costs (including the costs of any investigation, study, assessment, sampling, testing, abatement, cleanup, removal, remediation or other response action associated with any Hazardous Materials), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents); or (ii) any Environmental Claim or liability or obligation that may be imposed upon, incurred by or asserted against any Indemnitee pursuant to Environmental Law, including those relating to or arising from, directly or indirectly, any past or present activity, practice, or operation of, or land ownership, lease, operation, or use by Borrower or any of its Subsidiaries.

"**Indemnitee**" as defined in Section 10.3.

"**Indemnitee Agent Party**" as defined in Section 9.6.

"**Interest Payment Date**" means (a) the last day of each Fiscal Quarter, commencing on the first such date to occur after the Closing Date, and (b) the final maturity date of the Term Loan.

"**Interest Rate Agreement**" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (i) for the purpose of hedging the interest rate exposure associated with Borrower's and its Subsidiaries' operations, (ii) approved by Administrative Agent, and (iii) not for speculative purposes.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

"**Investment**" means (i) any direct or indirect purchase or other acquisition by Borrower or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than a Subsidiary of Borrower); (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Borrower from any Person (other than Borrower or any Subsidiary of Borrower), of any Capital Stock of such Person; and (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Borrower or any of its Subsidiaries to any other Person (other than Borrower or any Subsidiary of Borrower), including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write ups, write downs or write offs with respect to such Investment.

"**IP Ancillary Rights**" means, with respect to any Intellectual Property (of the type described in clauses (a) and (c) of the definition of Intellectual Property), as applicable, all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.

"**IP License**" means all Contractual Obligations (and all related IP Ancillary Rights), whether written or oral, granting any right, title and interest in or relating to any Intellectual Property of the type described in clause (a) of the definition of Intellectual Property.

"**Joint Venture**" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"**Laws**" or "**laws**" means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"**Lead Arranger**" as defined in the preamble hereto.

"**Lender**" means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement.

"**Lender Counterparty**" means each Lender or any Affiliate of a Lender counterparty to an Interest Rate Agreement or Currency Agreement (including any Person who is a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into an Interest Rate Agreement or Currency Agreement, ceases to be a Lender).

"**Lien**" means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

"Limited Condition Acquisition" means any acquisition, including by way of merger, or Investment, in each case, by Borrower or one or more of its Subsidiaries permitted pursuant to this Agreement the consummation of which is not conditioned upon the availability of, or on obtaining, third party financing.

"**Luxor Capital**" as defined in the preamble hereto.

"**Market Price**" as defined in Section 2.7(c).

"**Margin Stock**" as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"**Material Adverse Effect**" means a material adverse effect on (i) the business, operations, assets or financial condition of Borrower and its Subsidiaries, taken as a whole; (ii) the ability of Borrower and its Subsidiaries, taken as a whole, to timely perform their Obligations; (iii) the legality, validity, binding effect, or enforceability against the Borrower of a Credit Document; or (iv) the rights, remedies and benefits available to, or conferred upon, Administrative Agent and any Lender under any Credit Document.

"**Material Contract**" means any contract or other arrangement to which Borrower or any of its Subsidiaries is a party (other than the Credit Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

"**Merger**" means the merger of Target with and into OpCo with OpCo as the surviving entity of such merger.

"**Merger Agreement**" means that certain Agreement and Plan of Merger dated as of May 16, 2018, by and among Borrower, OpCo and Target.

"**Minimum Percentage**" means, as of any time, the beneficial ownership (as defined in Rule 13d-3 promulgated under the Exchange Act) of shares of common stock of the Borrower equal to at least 5% of the outstanding common stock of Borrower (based, in the case of this definition, on the number of shares of common stock of the Borrower most recently identified by the Borrower as outstanding in any of the Borrower's SEC Filings, and assuming for purposes of this definition that all of the Notes held by Luxor Capital and its Affiliates were converted into shares of common stock of the Borrower in accordance with the terms of the Notes at such time).

"**Moody's**" means Moody's Investor Services, Inc.

"**Multiemployer Plan**" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"**NAIC**" means The National Association of Insurance Commissioners, and any successor thereto.

"**Non-Consenting Lender**" as defined in Section 2.14.

"**Non-US Lender**" as defined in Section 2.12(c).

"**Note**" means a convertible promissory note in the form of Exhibit B, as it may be amended, supplemented or otherwise modified from time to time.

"**Obligations**" means all obligations of every nature of the Borrower from time to time owed to Administrative Agent (including former Administrative Agents) or the Lenders or any of them and Lender Counterparties, under any Credit Document or Interest Rate Agreement and Currency Agreement (including, without limitation, with respect to an Interest Rate Agreement or Currency Agreement, obligations owed thereunder to any person who was a Lender or an Affiliate of a Lender at the time such Interest Rate Agreement or Currency Agreement was entered into), whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to the Borrower, would have accrued on any Obligation, whether or not a claim is allowed against the Borrower for such interest in the related bankruptcy proceeding), payments for early termination of Interest Rate Agreements or Currency Agreements, fees, expenses, indemnification or otherwise.

"**OFAC**" as defined in Section 4.26(a).

"**OpCo**" means Waitr Inc., a Delaware corporation.

"**Organizational Documents**" means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its bylaws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"**Patents**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any requirement of Law in or relating to letters patent and applications therefor.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereto.

"**Pension Plan**" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"**Permitted Acquisition**" means any acquisition by Borrower or any of its Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person; provided,

(i) immediately prior to, and after giving effect thereto, no Event of Default shall have occurred and be continuing or would result therefrom; provided, that in the case of a Limited Condition Acquisition, (A) no Event of Default shall exist at, or occur immediately after, the signing of the applicable definitive acquisition agreement for such Limited Condition Acquisition and (B) no Event of Default under Section 8.1(a), 8.1(f) or 8.1(g) shall exist before or after giving effect to the consummation of such Limited Condition Acquisition; and

(ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(iii) in the case of the acquisition of Capital Stock, all of the Capital Stock (except for any such Securities in the nature of directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Subsidiary of Borrower in connection with such acquisition shall be owned 100% by Borrower or a Subsidiary thereof;

(iv) any Person or assets or division as acquired in accordance herewith (y) shall be in same, substantially similar or related business or lines of business in which Borrower and/or its Subsidiaries are engaged as of the Closing Date and (z) for the four quarter period most recently ended prior to the date of such acquisition for which financial statements are available, shall have generated earnings before income taxes, depreciation, and amortization during such period that shall exceed the amount of capital expenditures related to such Person or assets or division during such period;

(v) the acquisition shall have been approved by the board of directors or other governing body or controlling Person of the Person acquired or the Person from whom such assets or division is acquired;

(vi) at least two (2) Business Days prior to the consummation thereof (or such shorter period as Administrative Agent may agree in its sole discretion), to the extent available, (x) a due diligence package (including a quality of earnings report, to the extent available) in each case, prior to closing of such acquisition, and (y) (I) notice of such acquisition setting forth in reasonable detail the terms and conditions of such acquisition and (II) pro forma financial statements of Borrower and its Subsidiaries after giving effect to the consummation of such acquisition and the incurrence or assumption of any Indebtedness in connection therewith;

(vii) after giving effect to such acquisition, Consolidated Liquidity shall be at least $15,000,000; and

(viii) as soon as available, executed counterparts of the respective material agreements, documents, consents and approvals pursuant to which such acquisition is to be consummated.

"**Permitted Holder**" means Luxor Capital, Jefferies Financial Group Inc. and Fertitta Entertainment Inc., and their respective Affiliates.

"**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"**Prepayment Premium**" as defined in Section 2.7(b).

"**Principal Office**" means, for Administrative Agent, such Person's "Principal Office" as set forth on Appendix B, or such other office as such Person may from time to time designate in writing to Borrower, Administrative Agent and each Lender; provided, however, that for the purpose of making any payment on the Obligations or any other amount due hereunder or any other Credit Document, the Principal Office of Administrative Agent shall be 1114 Avenue of the Americas, 28th Floor, New York, NY 10036 (or such other location within the City and State of New York as Administrative Agent may from time to time designate in writing to Borrower and each Lender).

"**Projections**" as defined in Section 4.8.

"**Pro Rata Share**" means with respect to all payments, computations and other matters relating to the Term Loan of any Lender, the percentage obtained by dividing (a) the Term Loan Exposure of that Lender, by (b) the aggregate Term Loan Exposure of all Lenders. For all other purposes with respect to each Lender, "**Pro Rata Share**" means the percentage obtained by dividing (A) an amount equal to the sum of the Term Loan Exposure of that Lender, by (B) an amount equal to the sum of the aggregate Term Loan Exposure of all Lenders.

"**PTE**" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"**Qualified Preferred Stock**" shall mean any preferred stock of a Person so long as the terms of any such preferred stock (i) do not provide any collateral security, (ii) do not provide any guaranty or other support by the Person or any of its Subsidiaries, (iii) do not contain any put, redemption, repayment, sinking fund or other similar provision, (iv) do not require the cash payment of dividends or distributions and (v) do not provide for the conversion into, or the exchange for (unless at the sole discretion of the issuer thereof), debt securities.

"**Real Estate Asset**" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by the Borrower in any real property.

"**Real Property Facility**" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Borrower or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"**Register**" as defined in Section 2.4(b).

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of the date hereof, by and between Borrower, Luxor Capital Partners, LP, Luxor Capital Partners Offshore Master Fund, LP, Luxor Wavefront, LP and Lugard Road Capital Master Fund, LP.

"**Regulation D**" means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"**Related Agreements**" means, collectively, (i) the Credit and Guaranty Agreement or any of the other Credit Documents (as defined in the Credit and Guaranty Agreement) related thereto, (ii) the Merger Agreement and the material documents, instruments and agreements entered into in connection with the Merger Agreement, (iii) the definitive documentation in connection with the Warrants and (iv) the Registration Rights Agreement.

"**Related Fund**" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water, sediment or groundwater.

"**Replacement Lender**" as defined in Section 2.14.

"**Required Lenders**" means one or more Lenders having or holding Term Loan Exposure and representing more than 50% of the aggregate Term Loan Exposure of all Lenders.

"**Restricted Payment**" means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of Borrower, Holdings or OpCo now or hereafter outstanding, except a dividend payable solely in shares of that class of Capital Stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of Borrower, Holdings or OpCo now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of Borrower, Holdings or OpCo now or hereafter outstanding; and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness.

"**S&P**" means Standard & Poor's Ratings Group, a division of The McGraw Hill Corporation.

"**Sanctioned Country**" as defined in Section 4.26(a).

"**Sanctions**" as defined in Section 4.26(a).

"**SDN List**" as defined in Section 4.26(a).

"**SEC Filings**" as defined in Section 4.27.

"**Securities**" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"**Software**" means (a) all computer programs, including source code and object code versions, (b) all data, databases and compilations of data, whether machine readable or otherwise, and (c) all documentation, training materials and configurations related to any of the foregoing.

"**Solvency Certificate**" means a Solvency Certificate of the chief financial officer of Borrower substantially in the form of Exhibit F.

"**Solvent**" means, with respect to the Borrower, that as of the date of determination, both (i) (a) the sum of the Borrower's debt (including contingent liabilities) does not exceed the present fair saleable value of the Borrower's present assets; (b) the Borrower's capital is not unreasonably small in relation to its business as contemplated on the Funding Date and reflected in the Projections or with respect to any transaction contemplated or undertaken after the Funding Date; and (c) the Borrower has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) the Borrower is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No.5).

"**Subordinated Indebtedness**" means any Indebtedness expressly subordinated to the Obligations as to right and time of payment and having such subordination and other terms as are, in each case, reasonably satisfactory to Administrative Agent.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"**Target**" means, prior to the consummation of the Merger, Waitr Incorporated, a Louisiana corporation.

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed; provided, "**Tax on the overall net income**" of a Person shall be construed as a reference to a tax imposed by the jurisdiction in which that Person is organized or in which that Person's applicable principal office (and/or, in the case of a Lender, its lending office) is located or in which that Person (and/or, in the case of a Lender, its lending office) is deemed to be doing business on all or part of the net income, profits or gains (whether worldwide, or only insofar as such income, profits or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable lending office).

"**Term Loan**" means a Term Loan made by a Lender to Borrower pursuant to Section 2.1(a).

"**Term Loan Commitment**" means the commitment of a Lender to make or otherwise fund the Term Loan and "**Term Loan Commitments**" means such commitments of all Lenders in the aggregate. The amount of each Lender's Term Loan Commitment is set forth on Appendix A, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Term Loan Commitments as of the Closing Date is $60,000,000.

"**Term Loan Exposure**" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loan of such Lender; provided, at any time prior to the making of the Term Loan, the Term Loan Exposure of any Lender shall be equal to such Lender's Term Loan Commitment.

"**Term Loan Maturity Date**" means the earlier of (i) November 15, 2022, (ii) the date that the Term Loan shall become due and payable in full hereunder, whether by acceleration or otherwise and (iii) in the event that either (a) the registration statement for the resale of the shares of common stock underlying the Warrants and the Notes has not been filed within 30 days after the Closing Date, or (b) such registration statement is not effective within 180 days after the Closing Date, the date that is nine months after the first occurrence of either such event.

"**Terminated Lender**" as defined in Section 2.14.

"**Trade Secrets**" means all right, title and interest (and all related IP Ancillary Rights) arising under any requirement of Law in or relating to trade secrets.

"**Trademark**" means all rights, title and interests (and all related IP Ancillary Rights) arising under any requirement of Law in or relating to trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and, in each case, all goodwill associated therewith, all registrations and recordations thereof and all applications in connection therewith.

"**Transactions**" means, collectively, (a) the execution and delivery by the Borrower of the Credit Documents and the borrowing of the Term Loan and the issuance of the Notes hereunder on the Closing Date, (b) the issuance of the Warrants, (c) the Merger and the other transactions contemplated by the Merger Agreement, (d) the repayment of the Existing Indebtedness, (e) the execution and delivery by the parties thereto of the Credit and Guaranty Agreement (and the Credit Documents (as defined in the Credit and Guaranty Agreement) related thereto) to which they are a party and the borrowing of the term loan thereunder on the Closing Date and (f) the payment of Transaction Costs.

"**Transaction Costs**" means the fees, costs and expenses payable or otherwise borne by Borrower, Holdings, OpCo or any of OpCo's Subsidiaries on or before the Closing Date or within 90 days thereafter in connection with the Transactions and the transactions contemplated thereby.

"**UCC**" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"**USA Patriot Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56.

"**Valuation Date**" as defined in Section 2.7(c).

"**Waitr Material Adverse Effect**" means any change, event, fact or condition, individually or in the aggregate, that has had or would reasonably be expected to have a material adverse effect upon (a) the business, results of operations, workforce, prospects, properties, assets, liabilities or condition (financial or otherwise) of Target, or (b) the ability of Target to consummate the transactions contemplated by the Merger Agreement or to perform its obligations thereunder; provided, however, that the following shall not be deemed either alone or in combination to constitute, and no adverse change, event, fact or condition directly resulting from any of the following shall be taken into account in determining whether any change, event, fact or condition has had or would reasonably be expected to have a Waitr Material Adverse Effect: (i) changes in general economic conditions, to the extent that they do not have a materially disproportionate effect on Target; (ii) changes generally affecting the specific industry in which Target operates, to the extent that they do not have a materially disproportionate effect on Target relative to other industry participants; and (iii) any act of terrorism, war, calamity or act of God, to the extent that such act does not have a materially disproportionate effect on Target.

"**Warrants**" means warrants issued by Borrower to the Lenders to purchase up to an aggregate of $5,000,000 of common stock of Borrower.

"**Write-Down and Conversion Powers**" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.2. Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Borrower to Lenders pursuant to Sections 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation. Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements. For the avoidance of doubt, (i) notwithstanding any change in GAAP after the Closing Date that would require lease obligations that would be treated as operating leases as of the Closing Date to be classified and accounted for as Capital Leases or otherwise reflected on Borrower's consolidated balance sheet, such obligations shall continue to be excluded from the definition of Indebtedness and (ii) any lease that was entered into after the date of this Agreement that would have been considered an operating lease under GAAP in effect as of the Closing Date shall be treated as an operating lease for all purposes under this Agreement and the other Credit Documents, and obligations in respect thereof shall be excluded from the definition of Indebtedness.

1.3. Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. Any capitalized terms used in any Schedules attached hereto and not otherwise defined therein shall have the meanings set forth in this Agreement (or, in the absence of any ascribed meaning, the meaning customarily ascribed to any such term in the applicable industry or in general commercial usage). The use herein of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

1.4. Certifications. Any certificate or other writing required hereunder or under any other Credit Document to be certified by any officer or other authorized representative of any Person shall be deemed to be executed and delivered by the individual holding such office solely in such individual's capacity as an officer or other authorized representative of such Person and not in such officer's or other authorized representative's individual capacity.

SECTION 2. LOANS

2.1. Term Loan.

(a) Term Loan Commitments. Subject to the terms and conditions hereof, each Lender severally agrees to make, on the Funding Date, a portion of the Term Loan to Borrower in an amount equal to such Lender's Term Loan Commitment.

Borrower may make only one borrowing under the Term Loan Commitment which borrowing (i) shall be made on the Closing Date and (ii) shall be funded on the Funding Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Section 2.7, all amounts owed hereunder with respect to the Term Loan shall be paid in full no later than the Term Loan Maturity Date. Each Lender's Term Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender's Term Loan Commitment on such date.

(b) Borrowing Mechanics for Term Loan.

(i) Borrower shall deliver to Administrative Agent a fully executed Funding Notice no later than one Business Day prior to the Closing Date. Promptly upon receipt by Administrative Agent of such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing.

(ii) Each Lender shall make its share of the Term Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the Funding Date, by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Term Loan available to Borrower on the Funding Date by causing an amount of same day funds in Dollars equal to the proceeds of the Term Loan to be credited to the account of Borrower at Administrative Agent's Principal Office or to such other account as may be designated in writing to Administrative Agent by Borrower.

(c) Promise to Pay. Borrower hereby unconditionally promises to pay to Administrative Agent for the account of each Lender the then unpaid principal amount of the Term Loan of such Lender made to such Borrower due and payable on the Term Loan Maturity Date.

2.2. Pro Rata Shares. The Term Loan shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that (i) the failure of any Lender to fund any such Term Loan shall not relieve any other Lender of its obligation hereunder and (ii) no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make its share of the Term Loan requested hereunder nor shall any Term Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make its share of the Term Loan requested hereunder.

2.3. Use of Proceeds. The proceeds of the Term Loan made on the Closing Date shall be used by Borrower (i) to fund a portion of the consideration and to pay fees and expenses in connection with the closing of the Merger and (ii) to finance the working capital needs and other general corporate purposes of the Borrower (including for Permitted Acquisitions). No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

2.4. Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower to such Lender, including the amounts of the Term Loan made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Borrower, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of the Term Loan; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent shall maintain at its Principal Office a register for the recordation of the names and addresses of each Lender and each Lender's share of the Term Loan from time to time (the "**Register**"). The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record in the Register the Term Loan, and each repayment or prepayment in respect of the principal amount of the Term Loan, and any such recordation shall be conclusive and binding on Borrower and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of the Term Loan. Borrower hereby designates the entity serving as Administrative Agent to serve as Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.4, and Borrower hereby agrees that, to the extent such entity serves in such capacity, the entity serving as Administrative Agent and its officers, directors, employees, agents and affiliates shall constitute "Indemnitees."

(c) Notes. On the Closing Date, Borrower shall execute and deliver to each Lender a Note to evidence such Lender's share of the Term Loan. The Notes shall be issued in registered form, without coupons, in minimum denominations of $2,500,000. All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Borrower, evidencing the same debt, and entitled to the same benefits under this Agreement, as the Notes surrendered upon such registration of transfer or exchange.

2.5. Interest on Term Loan.

(a) Except as otherwise set forth herein, the Term Loan shall bear interest on the unpaid principal amount thereof from the date made through the earlier to occur of the repayment (whether by acceleration or otherwise) thereof or conversion thereof into Capital Stock of the Company at the rate of 1.0% per annum. Any portion of the Term Loan that is converted into Capital Stock of the Company shall cease to accrue interest on the date such Capital Stock of the Company is issued to a Lender. In connection with the conversion of the Term Loan into Capital Stock of the Company, no interest shall be payable in respect of the Term Loan to the extent that the amount of the accrued and unpaid interest was so converted.

(b) Interest payable pursuant to Section 2.5(a) shall be computed on the basis of a 360 day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on the Term Loan, the date of the making of such Term Loan shall be included and the date of payment of such Term Loan shall be excluded; provided, if the Term Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Term Loan.

(c) Except as otherwise set forth herein, interest on the Term Loan shall be payable in arrears, and in Cash on and to (i) each Interest Payment Date applicable to the Term Loan; (ii) upon any prepayment of the Term Loan to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity.

2.6. Default Interest. Upon the occurrence and during the continuance of an Event of Default, the principal amount of the Term Loan outstanding and, to the extent permitted by applicable law, any interest payments on the Term Loan or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand at a rate that is 5% per annum in excess of the interest rate otherwise payable hereunder with respect to the Term Loan. Payment or acceptance of the increased rates of interest provided for in this Section 2.6 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

2.7. Voluntary Prepayments. Borrower shall not prepay the Term Loan or the Notes except as follows:

(a) Upon the receipt of the written consent of the Required Lenders, which consent may be granted or withheld in the Lenders' sole discretion, at any time and from time to time, Borrower may prepay the Term Loan, without any premium, on any Business Day in whole or in part, in an aggregate minimum amount of $2,500,000 and integral multiples of $2,500,000 in excess of that amount.

(b) Subject to the right of the Lenders to convert the Notes, Borrower may, at its option, prepay the Term Loan in whole (and not in part) together with all accrued interest and all other amounts due hereunder and under any other Credit Documents, concurrently with the closing of any Fundamental Transaction (as defined in the Note), subject to the following conditions:

(i) Not later than twenty (20) Business Days prior to the consummation of the Fundamental Transaction Borrower shall deliver a written notice to the Lenders and Administrative Agent of the proposed Fundamental Transaction, which notice shall include a description of all material terms and conditions of such Fundamental Transaction, including Borrower's good faith calculation of the Transaction Consideration (as defined in the Note) payable to the Lenders if they convert the Notes into shares of Borrower's common stock prior to the Fundamental Transaction (the "**Conversion Proceeds**"); and

(ii) In addition to the prepayment of the Term Loan, Borrower shall pay to the Lender an amount equal to the greater of the following (the "**Prepayment Premium**"): (i) the aggregate value of Conversion Proceeds in excess of the principal amount of the Term Loan and (ii) (A) if the closing of such Fundamental Transaction occurs prior to the one-year anniversary of the date hereof, an amount equal to 25% of the aggregate principal amount of the Term Loan or (B) if the closing of such Fundamental Transaction occurs on or after the one-year anniversary of the date hereof, an amount equal to 50% of the aggregate principal amount of the Term Loan.

(c) The aggregate value of Conversion Proceeds shall be calculated as follows: (i) any amount of cash included in the Transaction Consideration plus (ii) the aggregate value of any securities included in the Transaction Consideration shall be calculated based on the aggregate Market Price (as defined below) of such securities plus (iii) the aggregate value of any other assets or evidences of indebtedness included in the Transaction Consideration shall be the aggregate fair market value of such assets or indebtedness as determined by the Board in good faith. "**Market Price**" of a security as of a particular date (the "**Valuation Date**") shall mean the following: (A) if such security is then listed on a Trading Market (as defined in the Note) or quoted on the OTC Markets (as defined in the Note), the volume weighted average price of such security as reported during the ten (10) Trading Day (as defined in the Note) period ending on the Trading Day prior to the Valuation Date; or (B) if such security is not then listed on a Trading Market or quoted on the OTC Markets, the fair market value of one share of such security as of the Valuation Date shall be determined in good faith by the Board.

(d) All such prepayments shall be made upon not less than one Business Day's prior written or telephonic notice given to Administrative Agent by 12:00 p.m. (New York City time) on the date required (after receipt of the consents noted in Section 2.7(a) and the notices required to be given in Section 2.7(b)) and, if given by telephone, promptly confirmed in writing to Administrative Agent (and Administrative Agent will promptly transmit such telephonic or original notice by telefacsimile or telephone to each Lender); provided, that any such notice required under this Section 2.7(d) may be conditioned on the occurrence of one or more other transactions or events. Upon the giving of any such notice under this Section 2.7(d), the principal amount of the Term Loan specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.8(a).

(e) Prepayment Certificate. Concurrently with any prepayment of the Term Loan, Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds owing to Lenders. In the event that Borrower shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Borrower shall promptly make an additional prepayment of the Term Loan in an amount equal to such excess, and Borrower shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

2.8. Application of Prepayments/Reductions.

(a) Any voluntary prepayments of the Term Loan pursuant to Section 2.7 shall be applied as follows:

first, to the payment of all fees, and all expenses specified in Section 10.2, to the full extent thereof;

second, to the payment of any accrued interest at the Default Rate, if any;

third, to the payment of any accrued interest (other than Default Rate interest);

fourth, to the Prepayment Premium, if any, on the Term Loan;

fifth, to prepay the Term Loan.

2.9. General Provisions Regarding Payments.

(a) All payments by Borrower of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent, for the account of Lenders, not later than 2:00 p.m. (New York City time) on the date due via wire transfer of immediately available funds to account number 849108725 maintained by Administrative Agent with JPMorgan Chase Bank, N.A. (ABA No. 021000021) in New York City (or at such other location or bank account within the City and State of New York as may be designated by Administrative Agent from time to time); funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Borrower on the next Business Day; provided, however, that in the case of a payment of the Prepayment Premium pursuant to Section 2.7(b), if the Transaction Consideration in such Fundamental Transaction is solely comprised of cash and freely tradable securities that are listed on a Trading Market (as defined in the Note), then such Prepayment Premium may, at Borrower's option, be paid in cash, shares of Borrower's common stock or a combination thereof; provided, further, that (i) in no event shall the percentage of the Prepayment Premium payable in cash be less than the weighted average percentage of cash payable to all holders of the Borrower's common stock in such Fundamental Transaction and (ii) for purposes of such determination, Borrower's common stock will be valued at the Market Price of such securities as of a Valuation Date that is ten (10) Trading Days (as defined in the Note) prior to the closing of the Fundamental Transaction.

(b) All payments in respect of the principal amount of the Term Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid.

(c) Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due with respect thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder.

(e) Administrative Agent shall deem any payment by or on behalf of Borrower hereunder that is not made in same day funds prior to 2:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a), but only to the extent that such non-conforming payment is not received by Administrative Agent on the next Business Day following the date when due. Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the Default Rate determined pursuant to Section 2.6 from the date such amount was due and payable until the date such amount is paid in full.

(f) If an Event of Default shall have occurred and not otherwise been waived, and the Obligations have become due and payable in full hereunder, whether by acceleration, maturity or otherwise, all payments or proceeds received by Administrative Agent hereunder in respect of any of the Obligations (including, but not limited to, Obligations arising under any Interest Rate Agreement or Currency Agreement that are owing to any Lender or Lender Counterparty) shall be applied in full or in part as follows: first, to the payment of all amounts for which Administrative Agent is entitled to indemnification hereunder, and to the payment of all costs and expenses paid or incurred by Administrative Agent in connection with the exercise of any right or remedy hereunder, all in accordance with the terms hereof; and second, to the extent of any excess of such proceeds, to the payment of all other Obligations for the ratable benefit of the Lenders and the Lender Counterparties.

2.10. Ratable Sharing. Lenders hereby agree among themselves that, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of the Term Loan made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

2.11. [Reserved].

2.12. Taxes; Withholding, etc.

(a) Payments to Be Free and Clear. All sums payable by the Borrower hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Lender) imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of the Borrower or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If the Borrower or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by the Borrower to Administrative Agent or any Lender under any of the Credit Documents: (i) Borrower shall notify Administrative Agent in writing of any such requirement or any change in any such requirement as soon as Borrower becomes aware of it; (ii) Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on the Borrower) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (iii) the sum payable by the Borrower in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including such deductions and withholdings applicable to additional sums payable under this provision), Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Borrower shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, no such additional amount shall be required to be paid to any Lender under clause (iii) above (A) with respect to Taxes imposed as a result of such Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), (B) except to the extent that any Change of Law after the date hereof (in the case of each Lender listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment Agreement pursuant to which such Lender became a Lender (other than pursuant to an assignment request by the Borrower under Section 2.14) (in the case of each other Lender) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof or at the date of such Assignment Agreement, in respect of payments to such Lender and (C) with respect to Taxes imposed under FATCA.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "**Non-US Lender**") shall deliver to Administrative Agent for transmission to Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower or Administrative Agent (each in the reasonable exercise of its discretion):

(i) in the case of a Non-US 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 Credit Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" Article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" Article of such tax treaty;

(ii) executed copies of IRS Form W-8ECI;

(iii) in the case of a Non-US Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Non-US Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "**U.S. Tax Compliance Certificate**") and (y) executed copies of IRS Form W 8BEN or W-8BEN-E, as applicable; or

(iv) to the extent a Non-US Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Non-US Lender is a partnership and one or more direct or indirect partners of such Non-US Lender are claiming the portfolio interest exemption, such Non-US Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner.

(d) Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to Section 2.12(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Borrower two new original copies of such forms, certificates or other evidence reasonably requested by Borrower to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence. Borrower shall not be required to pay any additional amount to any Non-US Lender under Section 2.12(b)(iii) if such Lender shall have failed (1) to deliver the forms, certificates or other evidence referred to in this Section 2.12(d), or (2) to notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of Section 2.12(c) on the Closing Date or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this Section 2.12(d) shall relieve Borrower of its obligation to pay any additional amounts pursuant this Section 2.12 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

2.13. Obligation to Mitigate. Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering the Term Loan, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would entitle such Lender to receive payments under Section 2.12, it will, to the extent not inconsistent with any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.12 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of the Term Loan through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect the Term Loan or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.13 unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this Section 2.13 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Administrative Agent) shall be conclusive absent manifest error.

2.14. Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "**Increased-Cost Lender**") shall give notice to Borrower that such Lender is entitled to receive payments under Section 2.12 or 2.13, (ii) the circumstances which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Borrower's request for such withdrawal; or (b) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Administrative Agent shall have been obtained but the consent of one or more of such other Lenders (each a "**Non-Consenting Lender**") whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender or Non-Consenting Lender (the "**Terminated Lender**"), Administrative Agent may (which, in the case of an Increased-Cost Lender, only after receiving written request from Borrower to remove such Increased-Cost Lender), by giving written notice to Borrower and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Term Loan in full to one or more Eligible Assignees (each a "**Replacement Lender**") in accordance with the provisions of Section 10.6 and Terminated Lender shall pay any fees payable thereunder in connection with such assignment; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Term Loan of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender; (2) on the date of such assignment, Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 2.12; and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. In the event that the Terminated Lender fails to execute an Assignment Agreement pursuant to Section 10.6 within five Business Days after receipt by the Terminated Lender of notice of replacement pursuant to this Section 2.14 and presentation to such Terminated Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 2.14, the Terminated Lender shall be deemed to have executed and delivered such Assignment Agreement, and upon the execution and delivery of Assignment Agreement by the Replacement Lender and Administrative Agent, shall be effective for purposes of this Section 2.14 and Section 10.6. Upon the prepayment of all amounts owing to any Terminated Lender such Terminated Lender shall no longer constitute a "**Lender**" for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

2.15. Conversion of the Notes. Notwithstanding anything to the contrary herein, upon the conversion by a Lender of any amount of the Notes into Capital Stock of the Borrower in accordance with the terms of such Note, the Term Loan of such Lender shall be reduced in an amount equal to the amount of the Notes so converted on the date that such Capital Stock of the Borrower is issued to such Lender.

SECTION 3. CONDITIONS PRECEDENT

3.1. Closing Date. The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(a) Credit Documents. Administrative Agent shall have received sufficient copies of each Credit Document duly executed and delivered by the Borrower for each Lender.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received (i) a certificate of the Borrower, dated the Closing Date and executed by a secretary or assistant secretary thereof, which shall (A) certify that attached thereto is a true and complete copy of the resolutions or written consents of its shareholders, board of directors, board of managers, members or other governing body authorizing the execution, delivery and performance of the Credit Documents and the borrowings hereunder, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect, (B) identify by name and title and bear the signatures of the officers, managers, directors or authorized signatories of the Borrower authorized to sign the Credit Documents on the Closing Date and (C) certify (x) that attached thereto is a true and complete copy of the certificate or articles of incorporation or organization (or memorandum of association or other equivalent thereof) of the Borrower certified as of a recent date by the relevant authority of the jurisdiction of organization of the Borrower and a true and correct copy of its by-laws or operating, management, partnership or similar agreement and (y) that such documents or agreements have not been amended (except as otherwise attached to such certificate and certified therein as being the only amendments thereto as of such date) and (ii) a good standing (or equivalent) certificate as of a recent date for the Borrower from its jurisdiction of organization.

(c) Transactions.

(i) Merger. Prior to or simultaneously with the initial incurrence of the Term Loan, (A) all conditions to closing set forth in the Merger Agreement shall have been satisfied (including, without limitation, the final vote of the shareholders of Borrower and any approvals required by Nasdaq) and (B) the Merger shall be consummated in accordance with the terms of the Merger Agreement, but without giving effect to any amendment, waiver or consent by Borrower, Holdings or OpCo that is materially adverse to the interests of the Lenders without the consent of the Lenders (which consent shall not be unreasonably withheld, conditioned or delayed); provided that Luxor Capital's consent will be required for any amendment, modification or waiver that would involve: (1) any negative impact on creditworthiness; (2) any impact on capital structure (including issuance of equity and equity-based incentives), except for issuances by Target of up to 150,000 shares of Target common equity or equity based incentives in connection with new hires; (3) incurrence of any new Indebtedness or other liabilities outside the ordinary course of business for Target; (4) any related-party transactions (covering new agreements or modifications to existing agreements) by Borrower or Target; (5) any changes to senior management of Borrower or Target; and (6) any waiver involving compliance with Law, and (C) there shall be no breach, default or grounds for default under the Merger Agreement.

(ii) Issuance of Warrants. Prior to or simultaneously with the initial incurrence of the Term Loan, the Warrants shall have been issued.

(iii) Consummation of Credit and Guaranty Agreement Loans. Prior to or simultaneously with the initial incurrence of the Term Loan, the Lenders (as defined in the Credit and Guaranty Agreement) shall have made the Term Loans (as defined in the Credit and Guaranty Agreement) in accordance with the terms of the Credit and Guaranty Agreement.

(iv) Exchange of Private Placement Warrants. Prior to or simultaneously with the initial incurrence of the Term Loan, the 14,000,000 private placement warrants held by Fertitta Entertainment, Inc. and Jefferies Financial Group Inc. shall be exchanged for 1,600,000 shares of Borrower's common stock.

(v) Satisfaction of Borrower's Convertible Loan. Prior to or simultaneously with the initial incurrence of the Term Loan, Fertitta Entertainment, Inc. shall have received (i) $1,250,000 in Cash and (ii) 75,000 shares of Borrower's common stock, in full satisfaction of Fertitta Entertainment, Inc.'s prior $1,500,000 loan to Borrower.

(vi) Registration Rights Agreement. The Registration Rights Agreement shall have been executed and delivered by Borrower.

(vii) Director Nominees. Jonathan Green shall have been elected to the board of directors of Borrower (the "**Board**") as a Class III Director (as defined in Borrower's Third Amended and Restated Certificate of Incorporation) and Scott Fletcher shall have been nominated by the Target pursuant to the terms of the Merger Agreement and elected to the Board as a Class II Director (as defined in Borrower's Third Amended and Restated Certificate of Incorporation), in each case at the Special Meeting (as defined in the Merger Agreement).

(d) Existing Indebtedness. On the Closing Date, Borrower and its Subsidiaries and Target shall have (i) repaid in full all Existing Indebtedness, (ii) terminated any commitments to lend or make other extensions of credit thereunder and (iii) delivered to Administrative Agent all documents or instruments necessary to release all Liens securing Existing Indebtedness or other obligations of Borrower and its Subsidiaries or Target thereunder being repaid on the Closing Date.

(e) Governmental Authorizations and Consents. The Borrower shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the Transactions and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent. All applicable waiting periods shall have expired without any action being taken or threatened in writing to the Borrower by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the Transactions or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(f) No Issuances of Additional Capital Stock. Since August 23, 2018, except as contemplated by the Related Agreements, Borrower shall not have issued any additional shares of Capital Stock (including any warrants, options or other instruments convertible into shares of Capital Stock), including previously outstanding shares of common stock that have been redeemed other than pursuant to Sections 3.1(c)(iv) and 3.1(c)(v); provided that Borrower may issue (or re-issue) shares of Capital Stock solely to the extent required in order to fund the Minimum Cash Consideration Amount (as defined in the Merger Agreement).

(g) Opinions of Counsel to the Borrower. Lenders and their respective counsel shall have received originally executed copies of a customary opinion of Winston & Strawn LLP, counsel for the Borrower, dated as of the Closing Date in form and substance satisfactory to Administrative Agent (and the Borrower hereby instructs such counsel to deliver such opinions to Administrative Agent and Lenders).

(h) Fees. Prior to or substantially concurrently with the funding of the Term Loan hereunder, Administrative Agent shall have received (i) payment of all fees required to be paid by Borrower or OpCo on the Closing Date pursuant to the Commitment Letter or Fee Letter and (ii) reimbursement for all costs and expenses required to be paid to Luxor Capital and/or its Affiliates by Borrower or OpCo pursuant to the Commitment Letter, in each case, for which invoices have been presented at least two Business Days prior to the Closing Date (including the reasonable and documented out-of-pocket costs and expenses of Luxor Capital's and its Affiliates' due diligence investigation and any fees and expenses of legal counsel), which amounts may be offset against the proceeds of the Term Loan.

(i) Solvency Certificate. On the Closing Date, Administrative Agent shall have received a Solvency Certificate from the chief financial officer (or other financial officer with reasonably equivalent responsibilities) of the Borrower certifying as to the matters set forth therein dated as of the Closing Date.

(j) Minimum Liquidity. The Borrower shall demonstrate in form and substance reasonably satisfactory to Administrative Agent that on the Closing Date, including the payment of all Transaction Costs required to be paid in Cash, the Borrower shall have at least $75,000,000 of Cash.

(k) No Waitr Material Adverse Effect. Since December 31, 2017, no Waitr Material Adverse Effect has occurred.

(l) Officer's Certificate. Administrative Agent shall have received a certificate signed by an Authorized Officer of the Borrower certifying as of the Closing Date to the matters set forth in Sections 3.1(j), (k), (o) and (p).

(m) USA Patriot Act. No later than two Business Days in advance of the Closing Date, Administrative Agent shall have received all documentation and other information reasonably requested by the Lender at least 10 days in advance of the Closing Date, which documentation or other information is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(n) Funding Notice. Administrative Agent shall have received at least one Business Day prior to the Closing Date a fully executed and delivered Funding Notice.

(o) Representations and Warranties. Other than the representation and warranty contained in Section 4.9, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of the Closing Date (except for those representations and warranties that are conditioned by materiality, which shall be true and correct in all respects) on and as of the Closing Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which shall have been true and correct in all respects) on and as of such earlier date.

(p) No Default or Event of Default. As of the Closing Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default.

Each Lender, by delivering its signature page to this Agreement on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by Administrative Agent, Required Lenders or Lenders, as applicable on the Closing Date.

3.2. Conditions Subsequent to the Closing Date. Borrower shall fulfill, on or before the date applicable thereto (which date can be extended in writing by Administrative Agent in its sole discretion), each of the conditions subsequent specified in Section 5.12.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF BORROWER

In order to induce Administrative Agent and Lenders to enter into this Agreement and to make the Credit Extension to be made thereby, the Borrower represents and warrants to Administrative Agent and Lender, on the Closing Date, that the following statements are true and correct:

4.1. Organization; Requisite Power and Authority; Qualification. Each of Borrower and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2. Capital Stock and Ownership. The Capital Stock of each of Borrower and its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Borrower or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of Borrower or any of its Subsidiaries outstanding which upon conversion or exchange would require, the issuance by Borrower or any of its Subsidiaries of any additional membership interests or other Capital Stock of Borrower or any of its Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of Borrower or any of its Subsidiaries. Schedule 4.2 correctly sets forth (a) the ownership interest of Borrower and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date both before and after giving effect to the Transactions and (b) the authorized Capital Stock of Borrower on the date hereof and after giving effect to the Transactions; (c) the number of shares of Capital Stock of Borrower issued and outstanding on the date hereof and after giving effect to the Transactions; (d) the number of shares of Capital Stock issuable pursuant to Borrower's or any Subsidiary's stock plans; and (e) the number of shares of Capital Stock issuable and reserved for issuance pursuant to Securities (other than the Warrants and the Notes) exercisable for, or convertible into or exchangeable for any shares of Capital Stock of Borrower or any of its Subsidiaries. No Person is entitled to pre-emptive or similar statutory or contractual rights with respect to any Capital Stock of Borrower or any of its Subsidiaries. Except as described on Schedule 4.2 and except for the Registration Rights Agreement, there are no voting agreements, buy-sell agreements, option or right of first purchase agreements, registration rights agreements or other similar agreements of any kind among Borrower and any of the securityholders of Borrower relating to the Capital Stock of Borrower held by them. Except as described on Schedule 4.2 and except pursuant to the Registration Rights Agreement, no Person has the right to require Borrower to register any securities of Borrower under the Securities Act, whether on a demand basis or in connection with the registration of Capital Stock of Borrower for its own account or for the account of any other Person. Except as described on Schedule 4.2 and except upon conversion of the Notes pursuant to their terms and the terms of this Agreement, the issuance of the Notes will not obligate Borrower to issue shares of Capital Stock or other Securities to any other Person and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding Security. The Capital Stock issuable upon conversion of the Notes, when issued, sold and delivered in accordance with the terms of this Agreement and the Notes for the consideration provided for herein and therein, will be duly and validly issued, fully paid and nonassessable.

4.3. Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of the Borrower.

4.4. No Conflict. The execution, delivery and performance by the Borrower of the Credit Documents and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate any provision of (i) any law or any governmental rule or regulation applicable to Borrower or any of its Subsidiaries, (ii) any of the Organizational Documents of Borrower or any of its Subsidiaries, or (iii) any order, judgment or decree of any court or other agency of government binding on Borrower or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Borrower or any of its Subsidiaries; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Borrower or any of its Subsidiaries (other than any Liens created under any of the Credit Documents (as defined in the Credit and Guaranty Agreement) in favor of Collateral Agent (as defined in the Credit and Guaranty Agreement), on behalf of Secured Parties (as defined in the Credit and Guaranty Agreement)); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of Borrower or any of its Subsidiaries, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders except, with respect to any conflict, breach, violation, contravention, approval or consent referred to in clauses (a)(i), (a)(iii), (b), (c), or (d), to the extent that such conflict, breach, violation, contravention or failure to obtain such approval or consent, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

4.5. **Governmental Consents**. The execution, delivery and performance by the Borrower of the Credit Documents and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority.

4.6. **Binding Obligation**. Each Credit Document has been duly executed and delivered by the Borrower and is the legally valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7. **Historical Financial Statements**. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Closing Date, neither Target nor any of its Subsidiaries has any contingent liability or liability for taxes, long term lease or unusual forward or long term commitment that is not reflected in the Historical Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets or financial condition of Target and any of its Subsidiaries taken as a whole.

4.8. **Projections**. On and as of the Closing Date, the Projections of Borrower and its Subsidiaries for the period of Fiscal Year 2019 through and including Fiscal Year 2023, including monthly projections for each month during the Fiscal Year in which the Closing Date takes place, (the "**Projections**") are based on good faith estimates and assumptions made by the management of Borrower; provided, the Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and that the differences may be material and are intended to be considered forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995; provided further, as of the Closing Date, management of Borrower believed that the Projections were reasonable and attainable.

4.9. **No Material Adverse Change**. Since December 31, 2017, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

4.10. **Adverse Proceedings, etc**. Except as set forth in Schedule 4.11, there are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.11. Payment of Taxes. Except as otherwise permitted under Section 5.3, all tax returns and reports of Borrower and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Borrower and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. Borrower knows of no proposed tax assessment against Borrower or any of its Subsidiaries which is not being actively contested by Borrower or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.12. Properties.

(a) Title. Each of Borrower and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good title to (in the case of all other personal property), all of their respective properties and assets reflected in their respective Historical Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.9. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Closing Date, Schedule 4.13 contains a true, accurate and complete list of (i) all Real Estate Assets, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of the Borrower, regardless of whether the Borrower is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and Borrower does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

4.13. Environmental Matters. Neither Borrower nor any of its Subsidiaries nor any of their respective Real Property Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law or any Environmental Claim that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law. There are and, to each of Borrower's and its Subsidiaries' knowledge, have been, no conditions, occurrences, or events which could reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries nor, to the Borrower's knowledge, any predecessor of Borrower or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Real Property Facility, and none of Borrower's or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent that could reasonably be expected to have a Material Adverse Effect. Borrower and each of its Subsidiaries is and has been in compliance with all Environmental Laws, including obtaining and maintaining all Governmental Authorizations required by any applicable Environmental Law except such non-compliance or Governmental Authorizations that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. There has been no Release of any Hazardous Materials at, on, under or from any property currently owned, or to each of Borrower's and its Subsidiaries' knowledge, at, on, under or from any property currently leased or operated or formerly owned, leased or operated by Borrower or any of its Subsidiaries that, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect.

4.14. **No Defaults**. Neither Borrower nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

4.15. **Material Contracts**. All Material Contracts are in full force and effect and no defaults currently exist thereunder.

4.16. **Governmental Regulation**. Neither Borrower nor any of its Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 2005, the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Neither Borrower nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.17. **Margin Stock**. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Term Loan made to the Borrower will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

4.18. **Employee Matters**. Neither Borrower nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against Borrower or any of its Subsidiaries, or to the best knowledge of Borrower, Holdings and OpCo, threatened in writing against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against Borrower or any of its Subsidiaries or to the best knowledge of Borrower, Holdings and OpCo, threatened in writing against any of them, (b) no strike or work stoppage in existence or threatened involving Borrower or any of its Subsidiaries, and (c) to the best knowledge of Borrower, Holdings and OpCo, no union representation question existing with respect to the employees of Borrower or any of its Subsidiaries and, to the best knowledge of Borrower, Holdings and OpCo, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.

4.19. **Employee Benefit Plans**. Borrower, each of its Subsidiaries and each of their respective ERISA Affiliates are in material compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan, except (with respect to any matter specified in the preceding clause, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by Borrower, any of its Subsidiaries or any of their ERISA Affiliates. No ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates. The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by Borrower, any of its Subsidiaries or any of their ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of Borrower, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero. Borrower, each of its Subsidiaries and each of their ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.

4.20. **Certain Fees**. No broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated hereby (it being understood and agreed that this representation does not cover or apply to any underwriting or financial advisory fees payable in connection with the Transactions).

4.21. **Solvency**. The Borrower is and, after the consummation of the Transactions to occur on the Closing Date and the incurrence of indebtedness and obligations in connection therewith, will be, Solvent.

4.22. **[Reserved]**.

4.23. **Compliance with Statutes, etc**. Each of Borrower and its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property (including compliance with all applicable Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any Governmental Authorizations issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of Borrower or any of its Subsidiaries), except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.24. **Disclosure**. No representation or warranty of the Borrower contained in any Credit Document or in any other documents, certificates or written statements furnished to Lenders by or on behalf of Borrower or any of its Subsidiaries for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact (known to Borrower, Holdings or OpCo, in the case of any document not furnished by either of them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Borrower, Holdings or OpCo to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to Borrower, Holdings or OpCo (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

4.25. Intellectual Property. Except as set forth on Schedule 4.26, the Borrower and each Subsidiary of the Borrower owns, or is licensed to use, all Intellectual Property necessary to conduct its business as currently conducted except for such Intellectual Property the failure of which to own or license would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. To the knowledge of the Borrower, except as set forth on Schedule 4.26, (a) the conduct and operations of the businesses of the Borrower and each Subsidiary of the Borrower does not infringe, misappropriate, dilute or violate any Intellectual Property owned by any other Person and (b) no other Person has contested any right, title or interest of the Borrower or any Subsidiary of the Borrower in, or relating to, any Intellectual Property, other than, in each case, as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.26. Foreign Assets Control Regulations; Anti-Money Laundering; Anti-Corruption Practices.

(a) The Borrower and each Subsidiary of the Borrower is in compliance in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations ("**Sanctions**") as administered by the U.S. Treasury Department's Office of Foreign Assets Control ("**OFAC**") and the U.S. State Department. The Borrower is not and no Subsidiary of the Borrower is (i) a Person on the list of the Specially Designated Nationals and Blocked Persons (the "**SDN List**"), (ii) a person who is otherwise the target of U.S. economic sanctions laws such that a U.S. person cannot deal or otherwise engage in business transactions with such person, (iii) a Person organized or resident in a country or territory subject to comprehensive Sanctions (a "**Sanctioned Country**"), or (iv) owned or controlled by (including by virtue of such Person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any Person on the SDN List or a government of a Sanctioned Country such that the entry into, or performance under, this Agreement or any other Credit Document would be prohibited by U.S. law.

(b) The Borrower and each Subsidiary of the Borrower is in compliance with all laws related to terrorism or is in compliance in all material respects with all laws related to money laundering including: (i) all applicable requirements of the Currency and Foreign Transactions Reporting Act of 1970 (31 U.S.C. 5311 et. seq., (the Bank Secrecy Act)), as amended by Title III of the USA Patriot Act, (ii) the Trading with the Enemy Act, (iii) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (66 Fed. Reg. 49079), any other enabling legislation, executive order or regulations issued pursuant or relating thereto and (iv) other applicable federal or state laws relating to "know your customer" or anti-money laundering rules and regulations. No action, suit or proceeding by or before any court or Governmental Authority with respect to compliance with such anti-money laundering laws is pending or threatened in writing against the Borrower or any Subsidiary of the Borrower.

(c) The Borrower and each Subsidiary of the Borrower is in compliance in all material respects with all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act of 1977 ("**FCPA**") and the U.K. Bribery Act 2010 ("**Anti-Corruption Laws**"). The Borrower has not, nor has any Subsidiary of the Borrower, nor, to the knowledge of the Borrower, has any director, officer, agent, employee, or other person acting on behalf of the Borrower or any Subsidiary of the Borrower, taken any action, directly or indirectly, that would result in a violation of applicable Anti-Corruption Laws. The Borrower and each Subsidiary of the Borrower has instituted and will continue to maintain policies and procedures designed to promote compliance with applicable Anti-Corruption Laws.

4.27. Delivery of SEC Filings. Borrower has made available to the Lenders through the EDGAR system, true and complete copies of Borrower's most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2017 (the "**10-K**"), and all other reports filed by Borrower pursuant to the Exchange Act since the filing of the 10-K and prior to the date hereof (collectively, the "**SEC Filings**"). The SEC Filings are the only filings required of Borrower pursuant to the Exchange Act for such periods.

4.28. SEC Filings.

(a) At the time of filing thereof, the SEC Filings complied as to form in all material respects with the requirements of the Exchange Act and did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(b) Each registration statement and any amendment thereto filed by Borrower since April 28, 2016 pursuant to the Securities Act and the rules and regulations thereunder, as of the date such statement or amendment became effective, complied as to form in all material respects with the Securities Act and did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein not misleading; and each prospectus filed pursuant to Rule 424(b) under the Securities Act, as of its issue date and as of the closing of any sale of securities pursuant thereto did not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

4.29. Internal Controls. Borrower and its Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Borrower has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) for Borrower and designed such disclosure controls and procedures to ensure that material information relating to Borrower, including its Subsidiaries, is made known to the certifying officers by others within those entities, particularly during the period in which Borrower's most recently filed period report under the Exchange Act is being prepared. Borrower's certifying officers have evaluated the effectiveness of Borrower's controls and procedures as of a date within 90 days prior to the filing date of the most recently filed periodic report under the Exchange Act (such date, the "**Evaluation Date**"). Borrower presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in Borrower's internal control over financial reporting (as defined in Exchange Act Rule 15d-15) or, to the Borrower's knowledge, in other factors that could significantly affect Borrower's internal controls. Borrower maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP and the applicable requirements of the Exchange Act.

4.30. No Directed Selling Efforts or General Solicitation. Neither Borrower nor any Person acting on its behalf has conducted any general solicitation or general advertising (as those terms are used in Regulation D, as promulgated by the Securities and Exchange Commission under the Securities Act) in connection with the offer or sale of the Notes.

4.31. No Integrated Offering. Neither Borrower nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any Borrower Security or solicited any offers to buy any Security, under circumstances that would adversely affect reliance by Borrower on Section 4(a)(2) of the Securities Act for the exemption from registration for the transactions contemplated hereby or would require registration of the Notes under the Securities Act. None of Borrower, its Subsidiaries, their Affiliates and any Person acting on their behalf will take any action or steps referred to in the preceding sentence that require the offer of the Notes hereunder to be registered under the Securities Act or cause the offering of the Notes hereunder to be integrated with other offerings for purposes of any applicable stockholder approval provisions of the rules of Nasdaq.

4.32. Private Placement. Assuming the accuracy of the representations and warranties of each of the Lenders in Section 7, the offer and sale of the Notes to the Lenders as contemplated hereby is exempt from the registration requirements of the Securities Act.

SECTION 5. AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that until the earlier of (i) the Facility Termination Date and (ii) the date that Notes comprising at least $45,000,000 of the principal amount of the Term Loan have been exchanged for New Notes (as defined in the Exchange Letter), the Borrower shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 5.

5.1. Financial Statements and Other Reports. Unless otherwise provided below, Borrower will deliver to Administrative Agent and Lenders:

(a) [Reserved];

(b) Quarterly Financial Statements. As soon as available, and in any event within 45 days after the end of the first three Fiscal Quarters of each Fiscal Year, the consolidated balance sheets of Borrower and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail, together with a Financial Officer Certification with respect thereto;

(c) Annual Financial Statements. As soon as available, and in any event within 90 days after the end of each Fiscal Year, (i) the consolidated balance sheets of Borrower and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, in reasonable detail, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of Moss Adams, LLP or other independent certified public accountants of recognized national standing selected by Borrower, and reasonably satisfactory to Administrative Agent (which report shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards in the United States of America;

(d) Compliance Certificate. Together with each delivery of financial statements of Borrower and its Subsidiaries pursuant to Sections 5.1(b) and 5.1(c), a duly executed and completed Compliance Certificate;

(e) [reserved];

(f) Notice of Default. Promptly upon any officer of Borrower, Holdings or OpCo obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Borrower, Holdings or OpCo with respect thereto; or (ii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Borrower has taken, is taking and proposes to take with respect thereto;

(g) Notice of Litigation. Promptly upon any officer of Borrower, Holdings or OpCo obtaining knowledge of (i) the institution of any Adverse Proceeding not previously disclosed in writing by Borrower to Lenders, or (ii) any material development in any Adverse Proceeding that, in the case of either clause (i) or (ii) could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to Borrower, Holdings or OpCo to enable Lenders and their counsel to evaluate such matters (it being understood that the receipt of any privileged information in respect of such Adverse Proceeding shall be subject to the execution by Lenders of documents required, in the reasonable opinion of the Borrower, to protect attorney-work product and/or attorney-client privileges);

(h) ERISA. (i) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; (2) all notices received by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (3) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request;

(i) Financial Plan. As soon as practicable and in any event no later than thirty days after the end of each Fiscal Year, a consolidated plan and financial forecast for such Fiscal Year and each Fiscal Year (or portion thereof) through the final maturity date of the Term Loan (a "**Financial Plan**"), including (i) a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Borrower and its Subsidiaries for each such Fiscal Year, together with pro forma Compliance Certificates for each such Fiscal Year and an explanation of the assumptions on which such forecasts are based, (ii) forecasted consolidated statements of income and cash flows of Borrower and its Subsidiaries for each month of each such Fiscal Year, and (iv) forecasts demonstrating adequate liquidity through the final maturity date of the Term Loan, together, in each case, with an explanation of the assumptions on which such forecasts are based all in form and substance reasonably satisfactory to Administrative Agent;

(j) [reserved];

(k) [reserved];

(l) [reserved];

(m) Other Information. (A) Promptly upon their becoming available, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by Borrower or any Subsidiary of Borrower to its security holders acting in such capacity, (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by Borrower or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, (iii) all press releases and other statements made available generally by Borrower or any of its Subsidiaries to the public concerning material developments in the business of Borrower or any of its Subsidiaries, and (B) such other information and data with respect to Borrower or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent.

Documents required to be delivered pursuant to Section 5.1 may be delivered electronically and if so delivered, shall be deemed to have been delivered (a) on the date on which Borrower posts such documents, or provides a link thereto on its website on the Internet at the website address or (b) on the date which such documents are filed for public availability on the Securities and Exchange Commission's Electronic Data Gathering and Retrieval System (EDGAR).

5.2. Existence. Except as otherwise permitted under Section 6.9, the Borrower will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, the Borrower shall not nor shall any of its Subsidiaries be required to preserve any such existence, right or franchise, licenses and permits if such Person's board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Lenders.

5.3. Payment of Taxes and Claims. The Borrower will, and will cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor. The Borrower will not, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Borrower or any of its Subsidiaries). In addition, Borrower agrees to pay to the relevant Governmental Authority or, at the option of Administrative Agent, timely reimburse it for the payment of, any current or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (including, without limitation, mortgage recording taxes, transfer taxes and similar fees) imposed by any Governmental Authority that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement.

5.4. Maintenance of Properties. The Borrower will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Borrower and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

5.5. **Insurance**. Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, (i) business interruption insurance reasonably satisfactory to Administrative Agent, and (ii) casualty insurance, such public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Borrower and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons.

5.6. **Inspections**. The Borrower will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by Administrative Agent or any Lender to visit and inspect any of the properties of the Borrower and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested; provided, however, in the absence of an Event of Default, such inspections, visits and discussions shall be limited to three times per Fiscal Year.

5.7. **Lenders Meetings**. Borrower, Holdings and OpCo will, upon the request of Administrative Agent or Required Lenders, participate in a meeting of Administrative Agent and Lenders once during each Fiscal Year to be held at Borrower's corporate offices (or at such other location as may be agreed to by Borrower and Administrative Agent) at such time as may be agreed to by Borrower and Administrative Agent.

5.8. **Compliance with Laws**. The Borrower will comply, and shall cause each of its Subsidiaries to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.9. **[Reserved]**.

5.10. **Further Assurances**. At any time or from time to time upon the request of Administrative Agent, the Borrower will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent may reasonably request in order to effect fully the purposes of the Credit Documents, including providing Lenders with any information reasonably requested pursuant to Section 10.21.

5.11. **Communication with Accountants**. The Borrower authorizes Administrative Agent to communicate directly with the Borrower's independent certified public accountants and authorizes and shall instruct those accountants, in each case subject to such accountants' customary policies and procedures, to communicate with Administrative Agent and each Lender information relating to the Borrower with respect to the business, results of operations and financial condition of the Borrower and its Subsidiaries; provided however, that Administrative Agent shall provide the Borrower with notice at least three (3) Business Days prior to first initiating any such communication and the Borrower and any of its Subsidiaries shall be given the right to be present at or participate in such discussions and communications.

5.12. Post-Closing Matters. Borrower shall, and shall cause each of its applicable Subsidiaries to, satisfy the requirements set forth on Schedule 5.12 on or before the date specified for such requirement or such later date to be determined by Administrative Agent.[1]

5.13. Director Nomination and Observer Rights.

(a) The Borrower agrees that, for as long as Luxor Capital, together with its Affiliates, owns in the aggregate the Minimum Percentage, the Board will:

(i) at any applicable meeting of the Company's shareholders, nominate the Director Designee for election as a Class III Director of the Borrower (other than in the case of such Director Designee's refusal or inability to serve), together with the other persons so nominated on the Borrower's slate in the Borrower's proxy statement or proxy card for such meetings;

(ii) recommend that the shareholders of the Borrower vote to elect the Director Designee as a Class III Director at such meetings; and

(iii) the Director Designee shall have the right to serve on all committees of the Board, unless the Board determines in good faith that the Director Designee does not satisfy the independence and other requirements for service thereon pursuant to Nasdaq rules.

(b) The Borrower shall use reasonable best efforts (which shall include the solicitation of proxies) to ensure that the Director Designee is elected at such meetings.

(c) In the event the then-current Director Designee voluntarily resigns as a director of the Borrower or is unable to serve as a director of the Borrower due to death or incapacity, Luxor Capital may nominate a replacement for the Director Designee (subject to the Board's good faith completion of its customary due diligence process, including review of a Directors' and Officers' questionnaire).

(d) For as long as Luxor Capital, together with its Affiliates, owns in the aggregate the Minimum Percentage and Luxor Capital does not have a Director Designee on the Board, Borrower shall invite a representative of Luxor Capital to attend all meetings of the Board and all committees thereof in a non-voting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors at the same time and in the same manner as provided to such directors; provided, however, that such representative shall agree to hold in confidence all information so provided; provided, further, that Borrower reserves the right to withhold any information, and to exclude such representative from any meeting or portion thereof, if access to such information or attendance at such meeting or portion thereof could result in a conflict of interest or adversely affect the attorney-client privilege between Borrower and its legal counsel or if such meeting or portion thereof is an executive session limited solely to independent directors, independent auditors and/or legal counsel, as the Board may designate, and such representative (assuming he or she were a member of the Board) would not meet the then-applicable standards for independence pursuant to Nasdaq rules.

SECTION 6. NEGATIVE COVENANTS

The Borrower covenants and agrees that until the earlier of (i) the Facility Termination Date and (ii) the date that Notes comprising at least $45,000,000 of the principal amount of the Term Loan have been exchanged for New Notes (as defined in the Exchange Letter), the Borrower shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

[1] Note to Draft: Schedule 5.12 should include sub (1) of Schedule 5.15 of the Credit and Guaranty Agreement.

6.1. Indebtedness. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness of any Guarantor Subsidiary to OpCo or to any other Guarantor Subsidiary, or of OpCo to any Guarantor Subsidiary; provided, (i) all such Indebtedness shall be evidenced by promissory notes and (ii) all such Indebtedness shall be unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement that in any such case, is reasonably satisfactory to Administrative Agent;

(c) Subordinated Indebtedness and refinancings and extensions of any such Subordinated Indebtedness in accordance in all respects with the requirements in respect thereof set forth in Section 6.5(iii);

(d) Indebtedness incurred by Borrower or any of its Subsidiaries arising from agreements providing for indemnification or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of Borrower or any such Subsidiary pursuant to such agreements, in each case, in the ordinary course of business;

(e) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business;

(f) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(g) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Borrower and its Subsidiaries;

(h) guaranties by OpCo of Indebtedness of a Guarantor Subsidiary of OpCo or guaranties by a Subsidiary of OpCo of Indebtedness of OpCo or a Guarantor Subsidiary of OpCo with respect, in each case, to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.1;

(i) Indebtedness described in Schedule 6.1, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement, and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof are not less favorable, taken as a whole, to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced (plus any fees and expenses and including any unfunded or available commitments), or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(j) Indebtedness in an aggregate amount not to exceed at any time $1,000,000 with respect to (x) Capital Leases and (y) purchase money Indebtedness (including any Indebtedness acquired in connection with a Permitted Acquisition); provided, in the case of clause (x), that any such Indebtedness shall be secured only by the asset subject to such Capital Lease, and, in the case of clause (y), that any such Indebtedness shall be secured only by the asset acquired in connection with the incurrence of such Indebtedness;

(k) other Indebtedness of Borrower and its Subsidiaries in an aggregate amount not to exceed at any time $5,000,000;

(l) unsecured earn-outs, deferred purchase price payments and working capital adjustments incurred in connection with Permitted Acquisitions, subject in each case to the limitations set forth in Section 6.9(e);

(m) indebtedness to a bank arising from the honoring by that bank of a check, draft or other similar instrument drawn against insufficient funds in the ordinary course of business;

(n) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(o) Indebtedness existing under any credit card or similar cash management program in an aggregate amount not to exceed at any time $500,000;

(p) Indebtedness consisting of promissory notes issued by Borrower or any of its Subsidiaries to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of equity interests of the Borrower or Holdings or OpCo permitted by Section 6.5; provided, such Indebtedness shall be subordinated in right of payment to the payment in full of the Obligations pursuant to terms reasonably satisfactory to Administrative Agent; and

(q) Indebtedness in respect of letters of credit in an aggregate principal amount not to exceed at any time $3,000,000; and

(r) the Indebtedness and other obligations of Holdings, OpCo and any Guarantor Subsidiary under the Credit and Guaranty Agreement.

6.2. Liens. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Borrower or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC of any State or under any similar recording or notice statute, except:

(a) Liens granted pursuant to the Credit and Guaranty Agreement;

(b) Liens for Taxes (i) not yet delinquent, or (ii) not required to be paid under Section 5.3 hereof;

(c) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401 (a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the ordinary course of business (i) for amounts not yet overdue, or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of thirty days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens consisting of pledges or deposits incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness) or to secure liability to insurance carriers, so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the assets of Borrower and its Subsidiaries on account thereof;

(e) easements, rights of way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Borrower or any of its Subsidiaries;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any cash earnest money deposits made by Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) licenses of patents, trademarks and other intellectual property rights granted by Borrower or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of the business of Borrower or such Subsidiary;

(l) Liens described in Schedule 6.2;

(m) Liens securing Capital Leases and/or purchase money Indebtedness permitted pursuant to Section 6.1(j); provided, any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness;

(n) licenses, sublicenses, leases or subleases granted to third parties in the ordinary course of business not interfering with the ordinary conduct of the business of the Borrower or any of its Subsidiaries in the ordinary course of business;

(o) Liens securing cash collateral for letters of credit permitted by Section 6.1(d) or (q); and

(p) additional Liens on property of the Borrower or any of its Subsidiaries not otherwise permitted by this Section 6.2 that secure obligations up to an aggregate amount of $1,000,000 for all such Liens at any time.

6.3. [Reserved].

6.4. No Further Negative Pledges. Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale and (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) the Borrower shall not nor shall any of its Subsidiaries enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

6.5. Restricted Payments. The Borrower shall not, nor shall it permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Payment except that the Borrower and its Subsidiaries may (i) make Restricted Payments to Holdings (and Holdings may make Restricted Payments to Borrower) in an aggregate amount not to exceed $500,000 in any trailing twelve month period, to the extent necessary to permit Holdings or Borrower to pay general administrative costs and expenses, (ii) make Restricted Payments to Holdings (and Holdings may make Restricted Payments to Borrower) to the extent necessary to permit Holdings (and, to the extent applicable, Borrower) to discharge the consolidated tax liabilities of Borrower and its Subsidiaries (solely to the extent such taxes are imposed with respect to the income or activities of Borrower and its Subsidiaries), (iii) pay amounts permitted by the subordination terms applicable to Subordinated Indebtedness permitted hereunder and refinancings and extensions of any such Subordinated Indebtedness if the terms and conditions thereof are not less favorable, taken as a whole, to the obligor thereon or to the Lenders than the Indebtedness being refinanced or extended (it being understood that the subordination terms of any such refinanced or extended Subordinated Indebtedness shall be on substantially identical terms as the Indebtedness so refinanced or otherwise shall be reasonably satisfactory to Administrative Agent), and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended, in each case, so long as Borrower or any of its Subsidiaries, as applicable, applies the amount of any such Restricted Payment for such purpose; provided, any such refinanced or extended Subordinated Indebtedness shall not (x) include Indebtedness of any obligor that was not an obligor with respect to the Subordinated Indebtedness being refinanced or extended, (y) exceed in principal amount the Subordinated Indebtedness being refinanced or extended (plus any fees, premiums and expenses and including any unfunded or available commitments) or (z) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom, (iv) make Restricted Payments solely in the form of Capital Stock, (v) make Restricted Payments to other Subsidiaries of Borrower and (vi) so long as no Default or Event of Default shall have occurred and be continuing or shall immediately be caused thereby, cause its Subsidiaries to make Restricted Payments to Holdings, and, if applicable (but without duplication), cause Holdings to make Restricted Payments to Borrower, the proceeds of which shall be used solely to purchase or redeem from current or former employees, members of the board of directors, managers, consultants (or their respective estates, spouses or former spouses) of Borrower or Holdings, on account of the death, termination, resignation or other voluntary or involuntary cessation of such person's employment or directorship, shares of such Borrower's or Holdings' equity interests or options or warrants to acquire such equity interests in an aggregate amount for all such payments not to exceed $1,000,000 in any Fiscal Year (with unused amounts in any Fiscal Year being carried over to succeeding Fiscal Years subject to a maximum of $2,500,000 in any Fiscal Year).

6.6. Restrictions on Subsidiary Distributions. Except as provided herein, the Borrower shall not, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Borrower to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Borrower or any other Subsidiary of Borrower, (b) repay or prepay any Indebtedness owed by such Subsidiary to Borrower or any other Subsidiary of Borrower, (c) make loans or advances to Borrower or any other Subsidiary of Borrower, or (d) transfer any of its property or assets to Borrower or any other Subsidiary of Borrower other than restrictions (i) in agreements evidencing purchase money Indebtedness permitted by Section 6.1(j) that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, and (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement.

6.7. Investments. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) equity Investments owned as of the Closing Date in any Subsidiary and Investments made after the Closing Date among OpCo and/or one or more Guarantor Subsidiaries;

(c) Investments (i) in any Securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors, and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of Borrower and its Subsidiaries;

(d) intercompany loans to the extent permitted under Section 6.1(b);

(e) loans and advances to employees of Borrower and its Subsidiaries (i) made in the ordinary course of business and described on Schedule 6.7, and (ii) any refinancings of such loans after the Closing Date in an aggregate amount not to exceed $100,000 in any Fiscal Year;

(f) Investments made in connection with Permitted Acquisitions permitted pursuant to Section 6.9;

(g) Investments described in Schedule 6.7;

(h) Investments of a Person (in each case, which is an Investment permitted by this Section 6.7) that is (i) acquired and becomes a Subsidiary or (ii) merged or amalgamated or consolidated into any Subsidiary, in each case, in connection with a Permitted Acquisition after the Closing Date to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition, merger, amalgamation or consolidation and were in existence on the date of such Permitted Acquisition, merger, amalgamation or consolidation; and

(i) other Investments in an aggregate amount not to exceed at any time $2,500,000.

6.8. OFAC; USA Patriot Act; Anti-Corruption Laws. The Borrower shall not, and shall not permit any of its Subsidiaries to fail to comply with the laws, regulations and executive orders referred to in Section 4.26. The Borrower will not, nor will any Subsidiary of the Borrower, nor will any director, officer, agent, employee, or other person acting on behalf of the Borrower or any Subsidiary of the Borrower, use the proceeds of the Term Loan, directly or indirectly, for any payments to any Person, including any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, or otherwise take any action, directly or indirectly, that would result in a violation of any Anti-Corruption Laws. Furthermore, the Borrower will not, directly or indirectly, use the proceeds of the transaction, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Affiliate, joint venture partner or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person participating in the transaction of any Sanctions.

6.9. Fundamental Changes; Disposition of Assets; Acquisitions. The Borrower shall not, nor shall it permit any of its Subsidiaries to, consummate any transaction of merger or consolidation, consummate a Division/Series Transaction, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or issue any Capital Stock of Borrower, or convey, sell, lease or sub-lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and capital expenditures in the ordinary course of business) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Borrower may be merged with or into Borrower (so long as Borrower is the survivor of such merger) or any other Subsidiary of Borrower, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Borrower or any Subsidiary of Borrower;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

(c) Asset Sales, the proceeds of which, when aggregated with the proceeds of all other Asset Sales made within the trailing twelve month period, are less than $1,000,000; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of Borrower (or similar governing body)) and (2) no less than 75% thereof shall be paid in Cash;

(d) disposals of obsolete, surplus or worn out property;

(e) Permitted Acquisitions; provided, that the aggregate consideration paid as purchase price consideration (including, without limitation, Cash consideration, unsecured earnouts (valued at the time of the making of such Investment in accordance with GAAP) and deferred purchase price payments) does not exceed $10,000,000 in the aggregate from the Closing Date to the date of determination;

(f) Investments made in accordance with Section 6.7;

(g) dispositions of inventory or equipment in the ordinary course of business;

(h) dispositions of Cash Equivalents;

(i) dispositions of accounts receivable in the ordinary course of business (including any discount and/or forgiveness thereof) or, in the case of accounts receivable in default, in connection with the collection or compromise thereof and, in any event, not involving any securitization thereof;

(j) leases, subleases, licenses or sublicenses, in each case, in the ordinary course of business and which do not materially interfere with the business of the Borrower;

(k) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims in the ordinary course of business, in each case, which do not materially interfere with the business of the Borrower and its Subsidiaries; and

(l) the issuance or sale of Capital Stock of Borrower other than Disqualified Preferred Stock.

provided, that, upon not less than ten (10) Business Days prior written notice to Administrative Agent, any Subsidiary of Borrower may enter into a Division/Series Transaction so long as (x) no Default or Event of Default has occurred and is continuing or would arise therefrom, and (y) if any such Division/Series Transaction is consummated, each division or series of a Person created thereby shall be subject to all of the terms and provisions of this Agreement and the other Credit Documents, as fully as if such Person was subject hereto and thereto prior to giving effect to such Division/Series Transaction (and the Borrower shall be required to ensure such division or series complies with all terms and provisions of this Agreement and the other Credit Documents as fully as if such division or series was a Subsidiary of the Borrower), and, upon the request of Administrative Agent, the applicable Person, division and series shall reaffirm the foregoing in writing in form and substance reasonably acceptable to Administrative Agent.

6.10. Disposal of Subsidiary Interests. Except for any sale of all of its interests in the Capital Stock of any of its Subsidiaries in compliance with the provisions of Section 6.9, the Borrower shall not, nor shall it permit any of its Subsidiaries to, (a) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify directors if required by applicable law; or (b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to another Subsidiary of Borrower, or to qualify directors if required by applicable law.

6.11. Sales and Lease-Backs. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which the Borrower (a) has sold or transferred or is to sell or to transfer to any other Person (other than Borrower or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by the Borrower to any Person (other than Borrower or any of its Subsidiaries) in connection with such lease.

6.12. Transactions with Affiliates. The Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of Borrower; provided, however, that the Borrower and its Subsidiaries may enter into or permit to exist any such transaction if the terms of such transaction are not less favorable to Borrower or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; further, provided, that the foregoing restrictions shall not apply to (a) any transaction between OpCo and any Guarantor Subsidiary; (b) reasonable and customary fees and indemnitees paid to members of the board of directors (or similar governing body) of Borrower and its Subsidiaries; (c) compensation arrangements for officers and other employees of Borrower and its Subsidiaries entered into in the ordinary course of business; (d) transactions described in Schedule 6.12 and amendments thereof which are not materially adverse to the Lenders; (e) Indebtedness permitted by Sections 6.1(b), (h) and (p), Restricted Payments permitted by Section 6.5 and Investments permitted by Sections 6.7(b), (d), (e) and (h); (f) consummation of the Transactions; and (g) for the avoidance of doubt, fees, expenses, indemnity and expense reimbursement payable to Jefferies LLC and its Affiliates in connection with the Transactions, including pursuant to the Engagement Letters dated as of May 15, 2018 and October 10, 2018 between Borrower and Jefferies LLC. Borrower shall disclose in writing each material transaction with any Affiliate of Borrower or of any such holder to Administrative Agent; provided, however, the Borrower shall not be required to disclose in writing any transaction permitted by clauses (a), (b), (c), (f) and (g) above.

6.13. Conduct of Business. From and after the Closing Date, the Borrower shall not, nor shall it permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by the Borrower and its Subsidiaries on the Closing Date or any business reasonably related thereto and (ii) such other lines of business as may be consented to by Administrative Agent and Required Lenders.

6.14. Permitted Activities of Holdings. Other than as may be permitted by the Credit and Guaranty Agreement, Borrower shall ensure that Holdings shall not (a) incur, directly or indirectly, any Indebtedness or any other obligation or liability whatsoever other than the Indebtedness and obligations under the Related Agreements; (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than the Liens permitted pursuant to Section 6.2; (c) engage in any business or activity or own any assets other than (i) holding 100% of the Capital Stock of OpCo; (ii) performing its obligations and activities incidental thereto under applicable laws and regulations, the Credit and Guaranty Agreement, and to the extent not inconsistent therewith, the Related Agreements and the Credit Documents; and (iii) making Restricted Payments and Investments and other actions to the extent permitted by this Agreement; (iv) the execution and delivery or, and the performance of rights and obligations under, any guarantees of leases or insurance obligations or other guarantees (including in connection with workers compensation insurance or self-insurance), in each case, to the extent permitted hereunder; (v) providing indemnification to officers and directors in the ordinary course of business and (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and OpCo and its Subsidiaries; (d) consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person; (e) sell or otherwise dispose of any Capital Stock of any of its Subsidiaries; (f) create or acquire any Subsidiary or make or own any Investment in any Person other than OpCo; or (g) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

6.15. [Reserved]

6.16. Amendments or Waivers with Respect to Subordinated Indebtedness. The Borrower shall not, nor shall it permit any of its Subsidiaries to, amend or otherwise change the terms of any Subordinated Indebtedness, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or change is to increase the interest rate on such Subordinated Indebtedness, increase the principal amount thereof, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), change the redemption, prepayment or defeasance provisions thereof, change the subordination provisions of such Subordinated Indebtedness (or of any guaranty thereof), or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders of such Subordinated Indebtedness (or a trustee or other representative on their behalf) which would be adverse to the Borrower or its Subsidiaries or Lenders.

6.17. Fiscal Year. The Borrower shall not, nor shall it permit any of its Subsidiaries to change its Fiscal Year end from December 31.

6.18. Amendments to Organizational Agreements and Material Contracts. The Borrower shall not and shall not permit its Subsidiaries to (a) amend or permit any amendments to the Borrower's or any Subsidiary's Organizational Documents; or (b) amend or permit any amendments to, or terminate or waive any provision of, any Material Contract if such amendment, termination, or waiver would be materially adverse to Administrative Agent or the Lenders.

6.19. Prepayments of Subordinated Indebtedness. The Borrower shall not, nor shall it permit any of its Subsidiaries or Affiliates to, directly or indirectly, purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Subordinated Indebtedness prior to its scheduled maturity, other than Restricted Payments permitted pursuant to Section 6.5(iii).

6.20. Minimum Liquidity Covenant. Borrower shall not permit Consolidated Liquidity to be less than $15,000,000 as of the last day of each Fiscal Quarter ending prior to the Term Loan Maturity Date.

SECTION 7. REPRESENTATIONS AND WARRANTIES OF LENDERS

Each Lender, upon execution and delivery hereof represents and warrants as of the Closing Date to the Borrower that (i) it is an "accredited investor" (as defined in Regulation D under the Securities Act); (ii) it is a sophisticated party and has experience and expertise to evaluate, and is fully informed as to, the merits and risks of the making of commitments such as the applicable Commitments, and investing in the applicable Note and the Warrants to be issued to it (collectively, the "**Lender Securities**"), and is able to bear the economic risk of holding the Lender Securities for an indefinite period (including total loss of its investment); (iii) it will make its Commitment and acquire its Lender Securities for its own account in the ordinary course of its business and without a view to distribution of such Commitments and Lender Securities within the meaning of the Securities Act or the Exchange Act or other federal securities laws; (iv) such Lender does not own or control, or own or control any Person owning or controlling, any trade debt or Indebtedness of the Borrower other than the Obligations or any Capital Stock, Warrants or Notes of the Borrower; and (v) such Lender acknowledges that Borrower has given such Lender and its representatives the opportunity to ask questions of the Borrower and to acquire such additional information regarding its business and its financial condition as such Lender has requested.

Each Lender acknowledges that Lender Securities have not been registered under the Securities Act, or any state securities laws, and that the Lender Securities may not be transferred or sold except pursuant to the registration provisions of the Securities Act or pursuant to an applicable exemption therefrom and subject to state securities laws, as applicable.

SECTION 8. EVENTS OF DEFAULT

8.1. Events of Default. If any one or more of the following conditions or events shall occur (each an "**Event of Default**"):

(a) Failure to Make Payments When Due. Failure by Borrower to pay (i) the principal of and premium, if any, on the Term Loan whether at stated maturity, by acceleration or otherwise; (ii) when due any installment of principal of the Term Loan, by notice of voluntary prepayment or otherwise; or (iii) within three (3) Business Days after the same shall become due, any interest on the Term Loan or any fee or any other amount due hereunder; or

(b) Default in Other Agreements. (i) Failure of the Borrower or any of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an individual principal amount of $1,500,000 or more or with an aggregate principal amount of $3,500,000 or more, in each case beyond any applicable grace or cure period, if any, provided therefor; or (ii) breach or default by the Borrower or any of its Subsidiaries with respect to any other material term of (1) one or more items of Indebtedness in the individual or aggregate principal amounts referred to in clause (i) above, or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond any applicable grace or cure period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. Failure of the Borrower to perform or comply with any term or condition contained in Section 2.3, Section 5.1(b), (c), (d), (f) or (i), Section 5.2, Section 5.5, Section 5.6, Section 5.7, Section 5.12 or Section 6; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by the Borrower in any Credit Document or in any statement or certificate at any time given by the Borrower or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Credit Documents. The Borrower shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other Section of this Section 8.1, and such default shall not have been remedied or waived within thirty days after the earlier of (i) an officer of the Borrower becoming aware of such default, or (ii) receipt by Borrower of notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Borrower or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Borrower or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Borrower or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Borrower or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Borrower or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Borrower or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) Borrower or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of Borrower or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of $1,500,000 or (ii) in the aggregate at any time an amount in excess of $3,500,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has not denied coverage) shall be entered or filed against Borrower or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree shall be entered against the Borrower decreeing the dissolution or split up of the Borrower and such order shall remain undischarged or unstayed for a period in excess of thirty days; or

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in liability of Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $2,000,000 during the term hereof; or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest under Section 430(k) of the Internal Revenue Code or under Section 303(k) of ERISA; or

(k) Change of Control. A Change of Control shall occur; or

(l) Credit Documents. At any time after the execution and delivery thereof, (i) this Agreement ceases to be in full force and effect (other than by reason of the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or (ii) the Borrower shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document;

THEN, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence of any other Event of Default, at the request of (or with the consent of) Required Lenders, upon notice to Borrower by Administrative Agent, (A) the Commitments, if any, of each Lender having such Commitments shall immediately terminate; and (B) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by the Borrower: (I) the unpaid principal amount of and accrued interest on the Term Loan, and (II) all other Obligations.

SECTION 9. AGENT

9.1. Appointment of Agent. Luxor Capital is hereby appointed Administrative Agent hereunder and under the other Credit Documents and each Lender hereby authorizes Luxor Capital, in such capacity, to act as its agent in accordance with the terms hereof and the other Credit Documents. Administrative Agent hereby agrees to act upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Administrative Agent and Lenders and the Borrower shall not have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, Administrative Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower or any of its Subsidiaries.

9.2. Powers and Duties. Each Lender irrevocably authorizes Administrative Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Administrative Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. Administrative Agent shall not have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon Administrative Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

9.3. General Immunity.

(a) No Responsibility for Certain Matters. Administrative Agent shall not be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by Administrative Agent to Lenders or by or on behalf of the Borrower to Administrative Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of the Borrower or any other Person liable for the payment of any Obligations, nor shall Administrative Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Term Loan or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Term Loan or the component amounts thereof.

(b) Exculpatory Provisions. Administrative Agent shall not, nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by Administrative Agent under or in connection with any of the Credit Documents except to the extent caused by or resulting from Administrative Agent's bad faith, gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. Administrative Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Administrative Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), Administrative Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.5).

9.4. Agent Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, Administrative Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Term Loan, Administrative Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include Administrative Agent in its individual capacity. Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Borrower or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrower for services in connection herewith and otherwise without having to account for the same to Lenders.

9.5. Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Borrower and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Borrower and its Subsidiaries. Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Term Loan or at any time or times thereafter, and Administrative Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by Administrative Agent, Required Lenders or Lenders, as applicable on the Closing Date.

(c) Each Lender (i) represents and warrants that as of the Closing Date neither such Lender nor its Affiliates or Related Funds owns or controls, or owns or controls any Person owning or controlling, any trade debt or Indebtedness of the Borrower, other than the Obligations, any Capital Stock, Warrants or Notes of the Borrower and (ii) covenants and agrees that from and after the Closing Date neither such Lender nor its Affiliates and Related Funds shall purchase any trade debt or Indebtedness of the Borrower other than the Obligations or Capital Stock, Warrants and Notes described in clause (i) above without the prior written consent of Administrative Agent.

9.6. Right to Indemnity. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify Administrative Agent, its Affiliates and its officers, partners, directors, trustees, employees and agents (each, an "**Indemnitee Agent Party**"), to the extent that such Indemnitee Agent Party shall not have been reimbursed by the Borrower, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnitee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Indemnitee Agent Party in any way relating to or arising out of this Agreement or the other Credit Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY**; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnitee Agent Party's bad faith, gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. If any indemnity furnished to any Indemnitee Agent Party for any purpose shall, in the opinion of such Indemnitee Agent Party, be insufficient or become impaired, such Indemnitee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.7. Successor Administrative Agent.

(a) Administrative Agent may resign at any time by giving thirty days' prior written notice thereof to Lenders and Borrower. Upon any such notice of resignation, Required Lenders shall have the right, upon 15 days' prior written consent of the Borrower (such consent not to be (a) unreasonably withheld, conditioned or delayed or (b) required if an Event of Default has occurred and is continuing), to appoint a successor Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall promptly transfer to such successor Administrative Agent all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder.

(b) Notwithstanding anything herein to the contrary, Administrative Agent may assign their rights and duties as Administrative Agent hereunder to an Affiliate of Luxor Capital without the prior written consent of, or prior written notice to, Borrower or the Lenders; provided that Borrower and the Lenders may deem and treat such assigning Administrative Agent as Administrative Agent for all purposes hereof, unless and until such assigning Administrative Agent, as the case may be, provides written notice to Borrower and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent hereunder and under the other Credit Documents.

9.8. 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, Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loan, the Commitments or this Agreement,

(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 Term Loan, 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 Term Loan, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loan, 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 Term Loan, the Commitments and this Agreement, or (iv) such other representation, warranty and covenant as may be agreed in writing between Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with 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, Administrative Agent and not, for the avoidance of doubt, to or for the benefit of Borrower, that Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Term Loan, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

SECTION 10. MISCELLANEOUS

10.1. Notices. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to the Borrower or Administrative Agent, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served, emailed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or email, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to Administrative Agent shall be effective until received by Administrative Agent. Any notice given by email shall be considered received on the next Business Day following the day transmitter sends any such notice; provided that any such notice shall not be considered received to the extent the transmitter receives any confirmation that the email was not delivered to or received by the recipient.

10.2. Expenses. The Borrower shall pay (a) all reasonable and documented out of pocket expenses incurred by Administrative Agent and its Affiliates (including the reasonable and documented fees, out-of-pocket charges and disbursements of one primary outside legal counsel for Administrative Agent and, if necessary or appropriate, one local counsel in each relevant jurisdiction and one regulatory counsel if reasonably required), in connection with the syndication of the Term Loans and Commitments, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents (including, without limitation, the reasonable out-of-pocket costs and expenses of Administrative Agent's and its Affiliates' due diligence investigation), or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (b) all out of pocket expenses incurred by Administrative Agent or any Lender (including the fees, charges and disbursements of one primary outside counsel for Administrative Agent, one primary outside counsel to the Lenders (and, in the case of a conflict of interest, additional counsels, as appropriate) and if necessary or appropriate, of any special counsel and one local counsel in each relevant jurisdiction (and in the case of a conflict of interest, additional counsels as appropriate) and one regulatory counsel if reasonably required) in connection with the enforcement, collection or protection of their rights (A) in connection with this Agreement and the other Credit Documents, including their rights under this Section, or (B) in connection with the Term Loans issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Term Loans. Notwithstanding the foregoing, all expenses incurred by Administrative Agent and its Affiliates in connection with the Transactions shall only be reimbursable by the Borrower up to the cap set forth in respect thereof as set forth in the Commitment Letter.

10.3. Indemnity.

(a) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, the Borrower agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, Administrative Agent and each Lender, their Affiliates and their respective officers, partners, directors, trustees, employees and agents of Administrative Agent and each Lender (each, an "**Indemnitee**"), from and against any and all Indemnified Liabilities, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE**; provided, the Borrower shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from (i) the bad faith, gross negligence, willful misconduct or material breach of this Agreement by any Indemnitee, as determined by a court of competent jurisdiction in a final, non-appealable order, of that Indemnitee or (ii) disputes solely among Indemnitees not involving any act or omission of the Borrower or any of its Subsidiaries (other than a dispute against Administrative Agent in its capacity as such). To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. This Section 10.3(a) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, or other liabilities arising from any non-Tax claim.

(b) To the extent permitted by applicable law, the Borrower shall not assert, and the Borrower hereby waives, any claim against Lenders, Administrative Agent and their respective Affiliates, directors, employees, attorneys or agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, the Term Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Borrower hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

10.4. Set Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, each Lender and its respective Affiliates each of is hereby authorized by the Borrower at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to the Borrower or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set-off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts (in whatever currency)) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of the Borrower (in whatever currency) against and on account of the obligations and liabilities of the Borrower to such Lender, including all claims of any nature or description arising out of or connected hereto and with any other Credit Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder, (b) the principal of or the interest on the Term Loan or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured or (c) such obligation or liability is owed to a branch or office of such Lender different from the branch or office holding such deposit or obligation or such Indebtedness.

10.5. Amendments and Waivers.

(a) Required Lenders' Consent. Subject to Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by the Borrower therefrom, shall in any event be effective without the written concurrence of Administrative Agent and the Required Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of the Term Loan or any Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) reduce the rate of interest on the Term Loan (other than any waiver of any increase in the interest rate applicable to the Term Loan pursuant to Section 2.6) or any fee payable hereunder;

(iv) amend the Conversion Rate (as defined in the Note) of any Note other than in accordance with its terms;

(v) extend the time for payment of any such interest or fees;

(vi) reduce the principal amount of the Term Loan;

(vii) amend, modify, terminate or waive any provision of this Section 10.5(b) or Section 10.5(c);

(viii) amend the definition of "**Required Lenders**" or "**Pro Rata Share**"; provided, with the consent of Administrative Agent and the Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of "**Required Lenders**" or "**Pro Rata Share**" on substantially the same basis as the Term Loan Commitments and the Term Loan are included on the Closing Date; or

(ix) consent to the assignment or transfer by the Borrower of any of its rights and obligations under any Credit Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by the Borrower therefrom, shall amend, modify, terminate or waive any provision of Section 9 as the same applies to Administrative Agent, or any other provision hereof as the same applies to the rights or obligations of Administrative Agent, in each case without the consent of Administrative Agent.

(d) Corrections. Notwithstanding anything to the contrary contained in this Section 10.5, Administrative Agent and Borrower may amend or modify this Agreement and any other Credit Document to cure any ambiguity, omission, defect or inconsistency therein.

(e) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by the Borrower, on the Borrower.

10.6. Successors and Assigns.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. None of Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, Indemnitee Agent Parties under Section 9.6, Indemnitees under Section 10.3, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of Administrative Agent and each Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Term Loan listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Term Loan shall be effective, in each case, unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Register as provided in Section 10.6(e). Prior to such recordation, all amounts owed with respect to the applicable Commitment or Term Loan shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Term Loan.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Commitment or Term Loan owing to it or other Obligations (provided, however, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of the Term Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (a) of the definition of the term "Eligible Assignee" upon the giving of notice to Administrative Agent and the Borrower; and

(ii) to any Person meeting the criteria of clause (b) or clause (c) of the definition of the term "Eligible Assignee" with the consent of Administrative Agent; provided, each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than $2,500,000 (or such lesser amount as may be agreed to by Borrower and Administrative Agent or as shall constitute the aggregate amount of the Term Loan of the assigning Lender) with respect to the assignment of the Term Loan.

(d) Mechanics. The assigning Lender and the assignee thereof shall execute and deliver to Administrative Agent an Assignment Agreement, together with such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to Administrative Agent pursuant to Section 2.12(c) or 2.12(d).

(e) Notice of Assignment. Upon its receipt and acceptance of a duly executed and completed Assignment Agreement, any forms, certificates or other evidence required by this Agreement in connection therewith, Administrative Agent shall record the information contained in such Assignment Agreement in the Register, shall give prompt notice thereof to Borrower and shall maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each assignee of a Lender, upon executing and delivering an Assignment Agreement, represents and warrants as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise to evaluate, and is fully informed as to, the merits and risks of the making of or investing in commitments or loans such as the applicable Commitments or Term Loan, as the case may be, and investing in the applicable Note, and is able to bear the economic risk of holding the Note for an indefinite period (including total loss of its investment); (iii) it will make or invest in, as the case may be, its Commitments or Term Loan and acquire the Note for its own account in the ordinary course of its business and without a view to distribution of such Commitments or Term Loan within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of Term Loan or any interests therein shall at all times remain within its exclusive control); and (iv) such Lender does not own or control, or own or control any Person owning or controlling, any trade debt or Indebtedness of the Borrower other than the Obligations or any Capital Stock, Warrants or Notes of the Borrower.

(g) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the "Effective Date" specified in the applicable Assignment Agreement: (i) the assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent such rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a "Lender" for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect the Commitment of such assignee and any Commitment of such assigning Lender, if any; and (iv) the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrower shall issue and deliver new Notes to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Commitments and/or outstanding Term Loan of the assignee and/or the assigning Lender.

10.7. Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8. Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof. Notwithstanding anything herein or implied by law to the contrary, the agreements of the Borrower set forth in Sections 2.12, 10.2, 10.3, 10.4, and 10.10 and the agreements of Lenders set forth in Sections 2.10, 9.3(b) and 9.6 shall survive the payment of the Term Loan and the termination hereof.

10.9. No Waiver; Remedies Cumulative. No failure or delay on the part of Administrative Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to Administrative Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10. Marshalling; Payments Set Aside. Neither Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that the Borrower makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or Administrative Agent or Lenders exercise their rights of setoff, and such payment or payments or the proceeds of such setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11. Severability. In case any provision in or obligation hereunder or any Note or other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.12. Obligations Several; Actions in Concert. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. Anything in this Agreement or any other Credit Document to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or any Note or otherwise with respect to the Obligations without first obtaining the prior written consent of Administrative Agent or Required Lenders (as applicable), it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and any Note or otherwise with respect to the Obligations shall be taken in concert and at the direction or with the consent of Administrative Agent or Required Lenders (as applicable).

10.13. Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.14. APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

10.15. CONSENT TO JURISDICTION. (A) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO ANY CREDIT DOCUMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, OR OF THE UNITED STATES OF AMERICA SITTING IN THE SOUTHERN DISTRICT OF NEW YORK AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, BORROWER ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL LIMIT THE RIGHT OF ADMINISTRATIVE AGENT TO COMMENCE ANY PROCEEDING IN THE FEDERAL OR STATE COURTS OF ANY OTHER JURISDICTION TO THE EXTENT ADMINISTRATIVE AGENT DETERMINES THAT SUCH ACTION IS NECESSARY OR APPROPRIATE TO EXERCISE ITS RIGHTS OR REMEDIES UNDER THE CREDIT DOCUMENTS. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, THAT ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH JURISDICTIONS.

(B) BORROWER HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL LEGAL PROCESS, SUMMONS, NOTICES AND OTHER DOCUMENTS AND OTHER SERVICE OF PROCESS OF ANY KIND AND CONSENTS TO SUCH SERVICE IN ANY SUIT, ACTION OR PROCEEDING BROUGHT IN THE UNITED STATES WITH RESPECT TO OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH ANY CREDIT DOCUMENT BY ANY MEANS PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, INCLUDING BY THE MAILING THEREOF (BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID) TO THE ADDRESS OF BORROWER SPECIFIED HEREIN (AND SHALL BE EFFECTIVE WHEN SUCH MAILING SHALL BE EFFECTIVE, AS PROVIDED THEREIN). BORROWER 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.

(C) NOTHING CONTAINED IN THIS SECTION 10.15 SHALL AFFECT THE RIGHT OF ADMINISTRATIVE AGENT OR ANY LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW OR COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

10.16. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17. Confidentiality. Each Lender shall maintain the confidentiality of all Confidential Information in accordance with such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Borrower that, in any event, a Lender may make (i) disclosures of such Confidential Information to Affiliates of such Lender and to their agents and advisors (and to other persons authorized by a Lender or Administrative Agent to organize, present or disseminate such Confidential Information in connection with disclosures otherwise made in accordance with this Section 10.17; provided that such persons are advised of and agreed to be bound by this Section 10.17) on a "need to know" basis solely in connection with the transactions contemplated hereby and who are informed of the confidential nature of such Confidential Information and are or have been advised of the obligation to keep such Confidential Information confidential, (ii) disclosures of such Confidential Information reasonably required by any bona fide or potential assignee or transferee in connection with the contemplated assignment or transfer by such Lender of the Term Loan or by any direct or indirect contractual counterparties (or the professional advisors thereto) in Interest Rate Agreements and Currency Agreements (provided, such counterparties and advisors are advised of and agree to be bound by the provisions of this Section 10.17), (iii) disclosure to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any Confidential Information relating to the Borrower received by it from Administrative Agent or any Lender, (iv) disclosure to any Lender's financing sources, provided that prior to any disclosure, such financing source is informed of the confidential nature of the Confidential Information and agrees to be bound by this Section 10.17, (v) disclosures required under applicable securities laws in connection with the registration, holding and sale of Borrower's Capital Stock, and (vi) disclosures required or requested by any Governmental Authority or representative thereof or by the NAIC or pursuant to legal or judicial process or other legal proceeding; provided, unless specifically prohibited by applicable law or court order, each Lender shall make reasonable efforts to notify Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such Governmental Authority) for disclosure of any such Confidential Information prior to disclosure of such Confidential Information. For purposes of this Section 10.17, "**Confidential Information**" means all information regarding Borrower and its Subsidiaries and their respective businesses other than any such information that is publicly available to any Lender on a non-confidential basis prior to disclosure by Borrower or any of its Subsidiaries. Notwithstanding anything to the contrary set forth herein, each party (and each of their respective employees, representatives or other agents) may disclose to any and all persons, without limitations of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other tax analyses) that are provided to any such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective Affiliates, and their and their respective Affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the federal income tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates. Notwithstanding the foregoing, on or after the Closing Date, Administrative Agent may, at its own expense issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of the Borrower) (collectively, "**Trade Announcements**"). The Borrower shall not issue any Trade Announcement except (i) disclosures required by applicable law, regulation, legal process or the rules of the Securities and Exchange Commission or (ii) with the prior approval of Administrative Agent, which such approval shall not be unreasonably withheld, conditioned or delayed.

10.18. Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Term Loan made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Term Loan made hereunder is repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Term Loan made hereunder or be refunded to Borrower. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

10.19. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic mail as a ".pdf" or ".tif" attachment shall be as effective as delivery of a manually executed counterpart hereof.

10.20. Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Borrower and Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

10.21. Patriot Act. Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the USA Patriot Act.

10.22. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, 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 Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

WAITR HOLDINGS INC.

By: /s/ Christopher Meaux
Name: Christopher Meaux
Title: Chief Executive Officer

[*Signature Page to Credit Agreement*]

LUXOR CAPITAL GROUP, LP,
as Administrative Agent and Lead Arranger

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

[*Signature Page to Credit Agreement*]

LUXOR CAPITAL PARTNERS, LP,
as a Lender

By: Luxor Capital Group, LP, its Investment Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP,
as a Lender

By: Luxor Capital Group, LP, its Investment Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

LUXOR WAVEFRONT, LP,
as a Lender

By: Luxor Capital Group, LP, its Investment Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

LUGARD ROAD CAPITAL MASTER FUND, LP,
as a Lender

By: Luxor Capital Group, LP, its Investment Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

APPENDIX A
TO CREDIT AGREEMENT

Lender	Term Loan Commitment	Pro Rata Share
Luxor Capital Partners, LP	$ 14,573,000	24.29%
Luxor Capital Partners Offshore Master Fund, LP	$ 10,313,000	17.19%
Luxor Wavefront, LP	$ 3,540,000	5.90%
Lugard Road Capital Master Fund, LP	$ 31,574,000	52.62%
Total	**$ 60,000,000.00**	**100%**

APPENDIX B
TO CREDIT AGREEMENT

Notice Addresses

If to the Borrower:

1510 West Loop South
Houston, Texas 77027
Attention: General Counsel

and

Waitr Inc.
844 Ryan Street, Suite 300
Lake Charles, LA 70601
Attention: Chief Executive Officer

in each case, with a copy to:

Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
Attention: Joel Rubinstein

and

Cara Stone, LLP
650 Poydras Street, Suite 1130
New Orleans, LA 70130
Attention: Mark Graffagnini

LUXOR CAPITAL GROUP, LP
as Administrative Agent
and Lead Arranger

Luxor Capital Group, LP
1114 Avenue of the Americas, 28th Floor
New York, New York 10036
Attention: Legal
Telecopier: (212) 763-8001

LUXOR CAPITAL PARTNERS, LP
LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP
LUXOR WAVEFRONT, LP
LUGARD ROAD CAPITAL MASTER FUND, LP
as Lenders

c/o Luxor Capital Group, LP
1114 Avenue of the Americas, 28th Floor
New York, New York 10036
Attention: Legal
Telecopier: (212) 763-8001

in each case, with a copy to:

Sidley Austin LLP
1999 Avenue of the Stars
17th Floor
Los Angeles, California 9006
Attention: Stephen Blevit

Exhibit 10.6

Execution Version

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS (I) THERE IS AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT AND THE SECURITIES HAVE BEEN QUALIFIED OR ARE EXEMPT UNDER APPLICABLE STATE SECURITIES LAWS, (II) SUCH SECURITIES ARE SOLD PURSUANT TO RULE 144, OR (III) THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OR QUALIFICATION UNDER APPLICABLE STATE SECURITIES LAWS. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES PROVIDED THAT SUCH PLEDGE DOES NOT CONSTITUTE OR RESULT IN A TRANSFER OF THE SECURITIES UNDER ANY APPLICABLE LAWS, RULES OR REGULATIONS.

No._____ November 15, 2018

WAITR HOLDINGS INC.

CONVERTIBLE PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned Waitr Holdings Inc., a Delaware corporation (the "Company"), hereby promises to pay on demand to [●] (the "Holder") or its registered permitted assign, a Term Loan in the principal amount of $[●] or such lesser amount as is outstanding from time to time, on the Term Loan Maturity Date as set forth in the Credit Agreement, dated as of November 15, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among the Company, the lenders from time to time party thereto (each, a "Lender"), and Luxor Capital Group, LP, as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement. All or any portion of the principal amount of this Note and any accrued and unpaid interest thereon may be converted at the Holder's option at the then-applicable Conversion Rate (as defined below) per $1,000 principal amount of the Note, into a number of shares ("Conversion Shares") of the Company's Common Stock, par value $0.0001 per share ("Common Stock") in accordance with the provisions of Section 3 hereof. The "Conversion Rate" shall initially be 76.9231 and the "Conversion Price" shall be, as of any date, $1,000 divided by the Conversion Rate as of such date. The number of Conversion Shares issuable upon conversion of this Note and the Conversion Rate shall be subject to adjustment from time to time as described herein.

This Note is one of the promissory notes referred to in the Credit Agreement that, among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain events, for optional prepayment of the principal hereof prior to the maturity hereof and for the amendment or waiver of certain provisions of the Credit Agreement, all upon the terms and conditions therein specified. This Note is entitled to the benefit of the Credit Agreement, and the Holder hereunder is a Lender for purposes of the Credit Agreement.

Section 1. Payments of Interest and Principal. The Company promises to pay interest from the date of such Term Loan on the principal amount thereof from time to time outstanding, in like Dollars, in each case, in the manner and at the rate or rates per annum and payable on the dates provided in the Credit Agreement. The Company also promises to pay interest on any overdue principal and, to the extent permitted by requirements of Law, overdue interest from the relevant due dates, in each case, in the manner, at the rate or rates and under the circumstances provided in the Credit Agreement. The borrowing of the Term Loan evidenced by this Note and all payments and prepayments of the principal hereof and interest hereon, and any conversions thereof in accordance with Section 3, and the respective dates thereof shall be endorsed by the Holder on Schedule A attached hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by the Holder in its internal records; provided, however, that the failure of the Holder to make such a notation or any error in such notation shall not affect the obligations of the Company under this Note.

Section 2. Transfers. This Note may be transferred or assigned only as permitted by the Credit Agreement pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "Securities Act"), and if qualified under applicable state securities laws or pursuant to an exemption from such registration and qualification, and the transfer or assignment of this Note and any rights with respect thereto are subject to the provisions of the Credit Agreement, including the provisions governing the Register.

Section 3. Conversion of Note.

(a) All or any portion of principal amount of this Note and any accrued and unpaid interest thereon may be converted at any time on or after the Closing Date and prior to the Term Loan Maturity Date into fully paid and non-assessable Conversion Shares at the Conversion Rate in effect at such time upon delivery of the notice of conversion form attached hereto as Appendix A (the "Notice of Conversion") to the Company during normal business hours on any day other than a Saturday or Sunday on which banks are open for business in New York City (a "Business Day") at the Company's principal executive offices (or such other office or agency of the Company as the Company may designate by notice to the Holder). The Conversion Shares so issued shall be deemed to be issued to the Holder or the Holder's designee, as the record owner of such shares, as of 5:00 P.M. New York City time on the date on which the completed Notice of Conversion shall have been delivered. Certificates for the Conversion Shares so issued, representing the aggregate number of shares to be issued with respect to the amount of the principal amount of the Note to be converted as specified in the Notice of Conversion, shall be transmitted by the Company's transfer agent (1) after submission by a Holder of an undertaking in the form attached hereto as Appendix B by crediting the account of the Holder's prime broker with The Depository Trust Company ("DTC") through its Deposit / Withdrawal At Custodian system if the Company is a participant in such system, and (2) otherwise by physical delivery to the address specified by the Holder in the Notice of Conversion, within a reasonable time, not exceeding three (3) Trading Days (as defined below) after this Note shall have been so converted, including the delivery of a completed Notice of Conversion (the "Conversion Share Delivery Date"). The certificates so delivered shall be in such denominations as may be reasonably requested by the Holder and shall be registered in the name of the Holder or such other name as shall be designated by the Holder in the Notice of Conversion. In addition to any other rights available to the Holder, if the Company fails to deliver to the Holder a certificate or certificates representing the Conversion Shares pursuant to a conversion on or before the Conversion Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Conversion Shares which the Holder anticipated receiving upon such conversion (a "Buy-In"), then, at the Company's sole option, the Company shall either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the "Buy-In Price"), at which point the Company's obligation to deliver such certificate (and to issue such shares of Common Stock) or credit such Holder's balance account with DTC shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit such Holder's balance account with DTC and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Market Price (as defined below) on the date of conversion. Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect to the Buy-In, together with applicable confirmations and other evidence reasonably requested by the Company. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon conversion of this Note as required pursuant to the terms hereof, and the Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Note and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Note to the Company until the Holder has converted all of the Conversion Shares available hereunder and this Note has been converted in full, in which case, the Holder shall surrender this Note to the Administrative Agent for cancellation within three (3) Trading Days of the date the final Notice of Conversion is delivered to the Company. Partial conversions of this Note resulting in issuances of a portion of the total number of Conversion Shares available hereunder shall have the effect of lowering the principal amount of the Note in an amount equal to the principal amount of the Note equal to the principal of the Note that was converted into Conversion Shares. The Company shall deliver any objection to any Notice of Conversion within one Business Day of receipt of such notice. In the event of any dispute or discrepancy, the records of the Company's transfer agent shall be controlling and determinative in the absence of manifest error. The Holder, by acceptance of this Note, acknowledges and agrees that, by reason of the provisions of this paragraph, following the conversion of a portion of this Note, the principal amount of this Note at any given time may be less than the amount stated on the face hereof. For purposes of this Note (i) a "Trading Day" means (A) a day on which the Common Stock is traded on a Trading Market (as defined below), or (B) if the Common Stock is not listed on a Trading Market, a day on which the Common Stock is traded on OTC Markets Group, Inc.'s OTCQB or OTCQX (the "OTC Markets"), or (C) if the Common Stock is not quoted on the OTC Markets, a day on which prices for the Common Stock are reported in the OTC Pink marketplace operated by OTC Markets Group, Inc. (or any similar organization or agency succeeding to its functions of reporting prices); provided, that in the event that the Common Stock is not listed, quoted or reported as set forth in (A), (B) and (C) hereof, then Trading Day shall mean a Business Day and (ii) "Trading Market" means the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market, the New York Stock Exchange or the NYSE American.

In addition to any other rights available to the Holder, if the Company fails to deliver to the Holder a certificate or certificates representing the Conversion Shares pursuant to a conversion on or before the Conversion Share Delivery Date, the Company shall be liable to the Holder for liquidated damages in an amount equal to 1.5% of the aggregate Conversion Price of the Conversion Shares issuable pursuant to such conversion for each thirty (30) day period (or *pro rata* for any portion thereof) beyond the Conversion Share Delivery Date.

(b) If this Note shall have been converted in part, the Company shall, at the request of the Holder and upon surrender of this Note, at its own expense and at the time of delivery of the certificate or certificates representing Conversion Shares, deliver to the Holder a new Note evidencing the rights of the Holder to the remaining principal amount of this Note, which new Note shall in all other respects be identical to this Note.

(c) Notwithstanding anything to the contrary herein, the Holder shall not have the right to convert any portion of this Note, pursuant to this Section 3 or otherwise, to the extent that after giving effect to the issuance of Conversion Shares after conversion, the Holder (together with the Holder's Affiliates), as set forth on the applicable Notice of Conversion, would beneficially own in excess of 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to such issuance. For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of its Affiliates and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other shares of Common Stock, Notes or other Convertible Securities) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 3(c), beneficial ownership shall be calculated in accordance with Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Rule 13d-3 of the Exchange Act, and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 3(c) applies, the determination of whether this Note is exercisable (in relation to other securities owned by the Holder together with the Holder's Affiliates) and of which portion of this Note is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Conversion shall be deemed to be the Holder's determination of whether this Note is exercisable (in relation to other securities owned by the Holder together with those of the Holder's Affiliates) and of which portion of this Note is exercisable, in each case subject to the limitation contained herein, and neither the Company nor its transfer agent shall have any obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 3(c), in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in the latest of (x) the Company's most recent Form 10-Q or Form 10-K, as the case may be, (y) a more recent public announcement by the Company or (z) any other notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. Following the written or oral request of the Holder, the Company shall, or shall cause its transfer agent to, within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The provisions of this Section 3(c) may be waived by the Holder, at the election of the Holder, upon not less than 61 days' prior notice to the Company, and the provisions of this Section 3(c) shall continue to apply until such 61st day (or such later date, as determined by the Holder, as may be specified in such notice of waiver).

Section4. Compliance with the Securities Act.

(a) Unless issued or registered pursuant to an effective registration statement, this Note and all Conversion Shares issued upon conversion of the Note shall bear a legend in substantially the following form:

> "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS (I) THERE IS AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT AND THE SECURITIES HAVE BEEN QUALIFIED OR ARE EXEMPT UNDER APPLICABLE STATE SECURITIES LAWS, (II) SUCH SECURITIES ARE SOLD PURSUANT TO RULE 144, OR (III) THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OR QUALIFICATION UNDER APPLICABLE STATE SECURITIES LAWS. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES PROVIDED THAT SUCH PLEDGE DOES NOT CONSTITUTE OR RESULT IN A TRANSFER OF THE SECURITIES UNDER ANY APPLICABLE LAWS, RULES OR REGULATIONS."

CONSTITUTE OR RESULT IN A TRANSFER OF THE SECURITIES UNDER ANY APPLICABLE LAWS, RULES OR REGULATIONS."

(b) In connection with a transfer of this Note pursuant to clause (I) in the legend set forth in Section 4(a) or a transfer of Conversion Shares pursuant to clause (II) in the legend set forth in Section 4(a), the Company shall promptly cause the legend to be removed from this Note or any such Conversion Shares, as applicable, upon delivery by the holder of this Note or such Conversion Shares, as applicable, to the Company and/or and the transfer agent for such Note or such shares of Common Stock such legal opinions, certificates or other documentation or evidence as may reasonably be required by either of them to determine that such transfer complies with the Securities Act and other applicable U.S. securities laws.

Section 5. Payment of Taxes. The Company will pay any documentary stamp, issue or transfer taxes or other incidental expenses attributable to the initial issuance of Conversion Shares issuable upon the conversion of this Note; provided, however, that the Company shall not be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificates for Conversion Shares in a name other than that of the Holder in respect of which such shares are issued, and in such case, the Company shall not be required to issue or deliver any certificate for Conversion Shares or any Note until the person requesting the same has paid to the Company the amount of such tax or has established to the Company's reasonable satisfaction that such tax has been paid. The Holder shall be responsible for income taxes due under federal, state or other law, if any such tax is due. The Company shall pay all of the Company's transfer agent fees required for same-day processing of any Notice of Conversion.

Section 6. Mutilated or Missing Notes. In case this Note shall be mutilated, lost, stolen, or destroyed, the Company shall issue in exchange and substitution of and upon cancellation of the mutilated Note, or in lieu of and substitution for this Note lost, stolen or destroyed, a new Note of like tenor and for the principal amount of such Note, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction of this Note (which shall not include the posting of any bond), and with respect to a lost, stolen or destroyed Note, reasonable indemnity with respect thereto, if requested by the Company.

Section 7. Authorized Shares. The Company hereby represents and warrants that there have been reserved, and the Company shall during the period the Note is outstanding at all applicable times keep reserved, out of the authorized and unissued shares of Common Stock, sufficient shares to provide for the conversion of this Note in full. The Company covenants that all Conversion Shares issued upon due conversion of this Note shall be, at the time of delivery of the certificates for such Conversion Shares, duly authorized, validly issued, fully paid and non-assessable shares of Common Stock of the Company and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue). The Company further covenants that its issuance of this Note shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the Conversion Shares upon the conversion of this Note. The Company will take all such reasonable action as may be necessary to assure that such Conversion Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company will carry out the terms of this Note in good faith. The Company will (i) not increase the par value of any Conversion Shares above the Conversion Price upon such conversion immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Conversion Shares upon the conversion of this Note and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Note.

Section 8. Adjustments. The Conversion Rate shall be subject to adjustment from time to time as set forth in this Section 8; provided, that (i) there shall be no adjustment to the Conversion Price or to the number of Conversion Shares acquirable upon exercise of the Note, as provided in this Section 8 (an "Adjustment"), unless and until such Adjustment, together with any previous Adjustments to the Conversion Price or to the number of Conversion Shares so acquirable that would otherwise have resulted in an Adjustment were it not for this proviso, would require an increase or decrease of at least 1% of the total number of Conversion Shares so acquirable at the time of such Adjustment, in which event such Adjustment and all such previous Adjustments shall immediately occur and (ii) notwithstanding the foregoing, all such deferred Adjustments that have not yet been made shall be made upon the conversion of all or a portion of this Note.

(a) If the Company shall, at any time or from time to time while this Note is outstanding, pay a dividend or make a distribution on its Common Stock in shares of Common Stock, subdivide its outstanding shares of Common Stock into a greater number of shares or combine its outstanding shares of Common Stock into a smaller number of shares or issue by reclassification of its outstanding shares of Common Stock any shares of its capital stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing corporation), then the Conversion Rate in effect immediately prior to the date upon which such change shall become effective, shall be proportionally adjusted by the Company to reflect a fair allocation of the economics of such event to the Holder. Such adjustments shall be made successively whenever any event listed above shall occur.

(b) If any capital reorganization, reclassification of the capital stock of the Company, consolidation or merger of the Company with another corporation in which the Company is not the survivor, or sale, transfer or other disposition of all or substantially all of the Company's assets to another corporation shall be effected (each, a "Fundamental Transaction"), then, as a condition of such Fundamental Transaction, lawful and adequate provision shall be made whereby each Holder shall thereafter have the right to convert this Note and receive upon the basis and upon the terms and conditions herein specified and in lieu of the Conversion Shares immediately theretofore issuable upon conversion of this Note, such shares of stock, securities or assets as would have been issuable or payable with respect to or in exchange for a number of Conversion Shares equal to the number of Conversion Shares immediately theretofore issuable upon conversion of this Note, had this Note been converted in full immediately prior to such Fundamental Transaction (the "Transaction Consideration"), and in any such case appropriate provision (as determined in good faith by the Board of Directors of the Company) shall be made with respect to the rights and interests of each Holder to the end that the provisions hereof (including, without limitation, the provision for the adjustment of the Conversion Rate) shall thereafter be applicable, as nearly equivalent as may be practicable in relation to any Transaction Consideration deliverable upon the conversion hereof. If any reclassification or reorganization also results in a change in shares of Common Stock covered by Section 8(a), then such adjustment shall be made pursuant to Section 8(a) and this Section 8(b). The Company shall not effect any such Fundamental Transaction unless prior to or simultaneously with the consummation thereof the successor corporation or entity (if other than the Company) resulting from such consolidation or merger, or the corporation or entity purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume the obligation to deliver to the Holder, at the last address of the Holder appearing on the books of the Company, such Transaction Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to receive upon conversion hereof, and the other obligations under this Note. Without limiting the generality of the foregoing, the terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 8(b) and insuring that this Note (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction. If the holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Transaction Consideration it receives upon any conversion of this Note following such Fundamental Transaction. At the Holder's request, any successor to the Company or surviving entity in such Fundamental Transaction shall issue to the Holder a new Note consistent with the foregoing provisions and evidencing the Holder's right to acquire the Transaction Consideration upon conversion thereof. The provisions of this Section 8(b) shall similarly apply to successive Fundamental Transactions.

(c) In case the Company shall fix a payment date for the making of a distribution to all holders of Common Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing corporation) of evidences of indebtedness or assets (other than cash dividends or cash distributions payable out of consolidated earnings or earned surplus or dividends or distributions referred to in Section 8(a)), or subscription rights or warrants, the Conversion Rate to be in effect after such payment date shall be determined as follows:

$$\text{Adjusted Conversion Price} = A \times \frac{B \times C}{(B \times C) - D}$$

where

"A" equals the Conversion Rate in effect immediately preceding such payment date;

"B" equals the number of shares of Common Stock outstanding immediately preceding such payment date;

"C" equals the Market Price per share of Common Stock immediately preceding such payment date; and

"D" equals the aggregate fair market value (as determined by the Company's Board of Directors in good faith) of said assets or evidences of indebtedness so distributed, or of such subscription rights or warrants.

"Market Price" as of a particular date (the "Valuation Date") shall mean the following: (A) if the Common Stock is then listed on a Trading Market or quoted on the OTC Markets, the volume weighted average price of the Common Stock as reported during the ten (10) Trading Day period ending on the Trading Day prior to the Valuation Date; or (B) if the Common Stock is not then listed on a Trading Market or quoted on the OTC Markets, the fair market value of one share of Common Stock as of the Valuation Date shall be determined in good faith by the Board of Directors of the Company. If the Common Stock is not then listed on a Trading Market or quoted on the OTC Markets or such other exchange or association, the Board of Directors of the Company shall respond promptly, in writing, to an inquiry by the Holder prior to the conversion hereunder as to the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Company.

(d) An adjustment to the Conversion Rate shall become effective immediately after the payment date in the case of each dividend or distribution and immediately after the effective date of each other event which requires an adjustment.

(e) In the event that, as a result of an adjustment made pursuant to this Section 8, the Holder shall become entitled to receive any shares of capital stock of the Company other than shares of Common Stock, the number of such other shares so receivable upon conversion of this Note shall be subject thereafter to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Conversion Shares contained in this Note.

(f) Except as provided in Section 8(i), if and whenever the Company shall issue or sell, or is, in accordance with any of Section 8(h)(1) - (7), deemed to have issued or sold, any shares of Common Stock for no consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then, and in each such case (a "Trigger Issuance"), the then-existing Conversion Rate shall be increased, as of the close of business on the effective date of the Trigger Issuance, to a rate determined as follows:

$$\text{Adjusted Conversion Rate} = 1{,}000 / B \times \frac{A + D}{A + C}$$

where

"A" equals the sum of (a) the number of shares of Common Stock actually outstanding at such time, *plus* (b) the number of shares of Common Stock issuable upon exercise of Options actually outstanding at such time, *plus* (c) the number of shares of Common Stock issuable upon conversion or exchange of Convertible Securities actually outstanding at such time (treating as outstanding any Convertible Securities issuable upon exercise of Options actually outstanding at such time), in each case, regardless of whether the Options or Convertible Securities are actually exercisable at such time; provided, that the foregoing shall not be deemed to include shares owned or held by or for the account of the Company or any of its wholly-owned subsidiaries;

"B" equals the Conversion Price in effect immediately preceding such Trigger Issuance;

"C" equals the number of Additional Shares of Common Stock issued or deemed issued hereunder as a result of the Trigger Issuance; and

"D" equals a number of shares of Common Stock equal to (i) the aggregate consideration, if any, received or deemed to be received by the Company upon such Trigger Issuance divided by (ii) the Conversion Price in effect immediately prior to the time of such issue or sale;

provided, however, that in no event shall the Conversion Rate after giving effect to such Trigger Issuance be lower than the Conversion Rate in effect prior to such Trigger Issuance.

"VWAP" means for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the volume weighted average of the prices per share of the Common Stock traded on such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 A.M. New York City time to 4:00 P.M. New York City time); (b) if the Common Stock is not then listed or quoted on a Trading Market and if prices for the Common Stock are then quoted on the OTC Markets, the volume weighted average of the prices per share of the Common Stock traded on such date (or the nearest preceding date) on the OTC Markets; (c) if the Common Stock is not then listed or quoted on the OTC Markets and if prices for the Common Stock are then reported in the OTC Pink marketplace operated by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the last bid price per share of the Common Stock so reported on such date (or the most recent bid price if none is reported for such date); or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Board of Directors of the Company.

(g) [Reserved.]

(h) For purposes of Section 8(f), "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 8(h), other than Excluded Issuances (as defined in Section 8(i)). For purposes of Section 8(f), the following Section 8(h)(1) - (7) shall also be applicable:

(1) Issuance of Rights or Options. In case at any time the Company shall in any manner grant (directly and not by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the sum (which sum shall constitute the applicable consideration) of (x) the total amount, if any, received or receivable by the Company as consideration for the granting of such Options, plus (y) the aggregate amount of additional consideration payable to the Company upon the exercise of all such Options, plus (z), in the case of such Options which relate to Convertible Securities, the aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Options, then the total number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding for purposes of adjusting the Conversion Rate. Except as otherwise provided in Section 8(h)(3), no adjustment of the Conversion Rate shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

(2) Issuance of Convertible Securities. In case the Company shall in any manner issue (directly and not by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the sum (which sum shall constitute the applicable consideration) of (x) the total amount received or receivable by the Company as consideration for the issue or sale of such Convertible Securities, plus (y) the aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (ii) the total number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding for purposes of adjusting the Conversion Rate, provided that (a) except as otherwise provided in Section 8(h)(3), no adjustment of the Conversion Rate shall be made upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities and (b) no further adjustment of the Conversion Rate shall be made by reason of the issue or sale of Convertible Securities upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Conversion Rate have been made pursuant to the other provisions of this Section 8(h).

(3) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in Section 8(h)(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Section 8(h)(1) or Section 8(h)(2), or the rate at which Convertible Securities referred to in Section 8(h)(1) or Section 8(h)(2) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Conversion Rate in effect at the time of such event shall forthwith be readjusted to the Conversion Rate which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold. On the termination of any Option for which any adjustment was made pursuant to Section 8(f) or any right to convert or exchange Convertible Securities for which any adjustment was made pursuant to Section 8(f) (including without limitation upon the redemption or purchase for consideration of such Convertible Securities by the Company), the Conversion Rate then in effect hereunder shall forthwith be changed to the Conversion Rate which would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(4) Stock Dividends. Subject to the provisions of this Section 8(h), in case the Company shall declare a dividend or make any other distribution upon any stock of the Company (other than the Common Stock) payable in Common Stock, Options or Convertible Securities, then any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration.

(5) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the net amount received by the Company therefor, after deduction therefrom of any underwriting commissions or concessions paid or allowed by the Company in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Company, after deduction of any underwriting commissions or concessions paid or allowed by the Company in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Company, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Company. If Common Stock, Options or Convertible Securities shall be issued or sold by the Company and, in connection therewith, other Options or Convertible Securities (the "Additional Rights") are issued, then the consideration received or deemed to be received by the Company shall be reduced by the fair market value of the Additional Rights (as determined using the Black-Scholes Option Pricing Model or another method mutually agreed to by the Company and the Administrative Agent). The Board of Directors of the Company shall respond promptly, in writing, to an inquiry by the Holder as to the fair market value of the Additional Rights. In the event that the Board of Directors of the Company and the Administrative Agent are unable to agree upon the fair market value of the Additional Rights, the Company and the Administrative Agent shall jointly select an appraiser, who is experienced in such matters. The decision of such appraiser shall be final and conclusive, and the cost of such appraiser shall be borne by the Company.

(6) Record Date. In case the Company shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Options or Convertible Securities or (ii) to subscribe for or purchase Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be; *provided*, that if before taking any such action the Company abandons its plan to pay or deliver such dividend, distribution, subscription or purchase rights, then thereafter no adjustment shall be required by the taking of such record and any such adjustment previously made in respect thereof shall be rescinded and annulled.

(7) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company or any of its wholly-owned subsidiaries, and the disposition of any such shares (other than the cancellation or retirement thereof) shall be considered an issue or sale of Common Stock for the purpose of this Section 8(h).

(i) Anything herein to the contrary notwithstanding, the Company shall not be required to make any adjustment of the Conversion Rate in the case of the issuance or deemed issuance of (A) capital stock, Options or Convertible Securities issued to directors, officers, employees or consultants of the Company in connection with their service as directors of the Company, their employment by the Company or their retention as consultants by the Company pursuant to an equity compensation program approved by the Board of Directors of the Company or the compensation committee of the Board of Directors of the Company; (B) shares of Common Stock issued upon the conversion or exercise of Options or Convertible Securities issued prior to the date hereof; provided that neither the conversion price or exercise price nor number of shares issuable under such Options or Convertible Securities is amended, modified or changed after the date hereto other than pursuant to the provisions of such Options or Convertible Securities as they exist as of the date hereof; (C) the Warrants issued to the Lenders in connection with the Credit and Guaranty Agreement and any other Notes issued pursuant to the Credit Agreement and securities issued upon the exercise or conversion of those securities; (D) shares of Common Stock issued upon the conversion of this Note; or (E) shares of capital stock, Options or Convertible Securities issued (I) in connection with a bona fide acquisition by the Company of another company or business or (II) to lenders as equity kickers in connection with debt financings of the Company, in each case where such transactions have been approved by the Board of Directors of the Company (collectively, "Excluded Issuances").

(j) If Section 8(a), Section 8(b) or Section 8(c) are applicable to an event, then Section 8(f) shall not be operative with respect to such event.

Section 9. Fractional Interest. The Company shall not issue fractions of Conversion Shares upon the conversion of all or a portion of this Note. If any fractional share of Common Stock would, except for the provisions of the first sentence of this Section 9, be deliverable upon such conversion, the Company shall, upon the exercise of all or a portion of this Note, round down to the nearest whole number the number of shares of Common Stock to be issued to the Holder.

Section 10. Notices to Holder and Administrative Agent. Upon the happening of any event requiring an adjustment of the Conversion Rate, the Company shall promptly give written notice thereof to the Holder and the Administrative Agent at the address appearing in the records of the Company, stating the adjusted Conversion Rate resulting from such event and setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Failure to give such notice to the Holder and the Administrative Agent or any defect therein shall not affect the legality or validity of the subject adjustment.

Section 11. Identity of Transfer Agent. The transfer agent for the Common Stock is Continental Stock Transfer & Trust Company. Upon the appointment of any subsequent transfer agent for the Common Stock or other shares of the Company's capital stock issuable upon the conversion of this Note, the Company will mail to the Holder a statement setting forth the name and address of such transfer agent.

Section 12. Registration Rights. The initial Holder is entitled to the benefit of certain registration rights with respect to the shares of Common Stock issuable upon the conversion of this Note as provided in the Registration Rights Agreement, and any permitted subsequent Holder shall be entitled to such rights.

Section 13. Successors. All the covenants and provisions hereof by or for the benefit of the Holder shall bind and inure to the benefit of its respective successors and assigns hereunder.

Section 14. Nonwaiver. No course of dealing or any delay or failure to exercise any right hereunder on the part of any party shall operate as a waiver of such right or otherwise prejudice such party's rights, powers or remedies, notwithstanding the fact that all rights hereunder terminate on the Term Loan Maturity Date.

Section 15. Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to convert this Note into Conversion Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

Section 16. APPLICABLE LAW. THIS NOTE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 17. No Rights as Stockholder. Prior to the conversion of this Note, the Holder shall not have or exercise any rights as a stockholder of the Company by virtue of its ownership of this Note.

Section 18. Section Headings. The section headings in this Note are for the convenience of the Company and the Holder and in no way alter, modify, amend, limit or restrict the provisions hereof.

Section 19. Company Waiver. The Company hereby waives diligence, presentment, demand, protest and notice of any kind to the extent possible under any applicable requirements of Law. The non-exercise by the Holder of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

Section 20. Note Transfer and Cancellation. The Holder agrees that it shall, upon the effectiveness of assignment of this Note or as promptly thereafter as practicable, surrender this Note to the Company for cancellation, and the Company shall, upon surrender of this Note, at its own expense deliver to such assignee a new Note evidencing the rights of the assignee to the remaining principal amount of this Note, which new Note shall in all other respects be identical to this Note.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed, as of the date first written above.

WAITR HOLDINGS INC.

By: _____
Name:
Title:

APPENDIX A
WAITR HOLDINGS INC.
NOTICE OF CONVERSION FORM

To [Name]:

The undersigned hereby irrevocably elects to exercise the right of conversion represented by the within Note ("Note") pursuant to this Notice of Conversion form ("Conversion Notice") for $_____ of the principal amount of the Note ("Conversion Amount") to be converted into shares of Common Stock ("Conversion Shares") as provided for therein, and requests that certificates for the Conversion Shares be issued as follows:

Name

Address

Federal Tax ID or Social Security No.

and delivered by: (certified mail to the above address, or
(electronically (provide DWAC instructions: _____), or
(other _____) (specify).

and, if the Conversion Amount shall not be all of the principal outstanding amount of the Note, that a new Note for the balance of the principal amount be registered in the name of the undersigned Holder or the undersigned's assignee as below indicated and delivered to the address stated below.

Notwithstanding anything to the contrary contained herein, this Conversion Notice shall constitute a representation by the Holder of the Note submitting this Conversion Notice that, after giving effect to the conversion provided for in this Conversion Notice, such Holder (together with its Affiliates) will not have beneficial ownership (together with the beneficial ownership of such person's Affiliates) of a number of shares of Common Stock which exceeds 9.99% of the total outstanding shares of Common Stock as determined pursuant to the provisions of Section 3(c) of this Note. In determining whether the Holder (together with its Affiliates) will not have beneficial ownership (together with the beneficial ownership of the Holder's Affiliates) of a number of shares of Common Stock which exceeds 9.99%, the Company may rely on the above representation and warranty of the Holder.

Dated:_____, _____

Note: The signature must correspond with the name of the Holder as written on the first page of this Note in every particular, without alteration or enlargement or any change whatever, unless this Note has been assigned.

Signature: _____

_____

Name (please print)

_____

_____

Address

_____

Federal Identification or
Social Security No.

Assignee:

_____

_____

_____

APPENDIX B
FORM OF UNDERTAKING

SHAREHOLDER CERTIFICATE

The undersigned (the "Shareholder") is delivering this certificate to Waitr Holdings Inc., a Delaware company (the "Company"), in connection with the Shareholder's request to remove the transfer restriction legends under the Securities Act of 1933, as amended (the "Securities Act"), from certificates or book-entry notations with respect to _____ shares of common stock, par value $.0001 per share (the "Shares"), of the Company, issued in in the name of the Shareholder.

The Shareholder hereby represents and warrants to the Company that it is sophisticated in financial matters, is familiar with the registration requirements under the Securities Act and is an institutional accredited investor under Rule 501(a) promulgated under the Securities Act because it falls within one of the categories set forth on Annex A hereto.

The Shareholder hereby covenants to the Company that the Shareholder will transfer the Shares only (a) pursuant to Rule 144 promulgated under the Securities Act on or after November 21, 2019, (b) in a transaction otherwise exempt from the registration requirements of the Securities Act if the transferee executes and delivers to the Company a certificate in the form of this certificate prior to or concurrently with such transfer or (c):

1. at such time or times as the Registration Statement on Form S-3 (File No. 333-[ ]) initially filed with the Securities and Exchange Commission ("SEC") on [ ], 2018 and declared effective by the SEC on [ ], 201[8], is effective and the prospectus that forms a part of the Registration Statement (the "Prospectus") is current (and the Shareholder has not received oral or written notice from the Company that the Prospectus is suspended or otherwise may not be used for transfers of the Shares);

2. pursuant to and in the manner contemplated by the Registration Statement, including the "Plan of Distribution" contained therein; and

3. otherwise in compliance with the Securities Act, including the rules and regulations promulgated thereunder.

Any notice to the Shareholder pursuant to paragraph 1 above shall be delivered orally, by email, fax or overnight or standard postal delivery to:

[Address]
[Telephone]
[Facsimile]
[Email]

The Shareholder further covenants to provide the Company with any update to the Shareholder's contact information set forth above to the extent necessary for purposes of any notification to be delivered to the Shareholder hereunder. Any such notice shall be delivered via email to [ ] and [ ].

The Company's legal counsel is authorized to rely on this certificate for purposes of preparing and delivering any legal opinion(s) required in connection with the removal of the transfer restriction legends from the Shares.

Very truly yours,

Name of Shareholder: _____
Signature: _____
Name of Signatory: _____
Title of Signatory: _____

[Signature Page to Shareholder Certificate]

Annex A

Institutional Accredited Investor Categories

☐ Any bank, registered broker or dealer, insurance company, registered investment company, business development company, or small business investment company

☐ Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of $5,000,000

☐ Any employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of $5,000,000

☐ a corporation, similar business trust, partnership or any organization described in Section 501(c)(3) of the Internal Revenue Code, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000

☐ Any trust with assets in excess of $5,000,000, not formed to acquire the securities offered, whose purchase is directed by a sophisticated person

☐ Any entity in which all of the equity owners are accredited investors meeting one or more of the above tests

SCHEDULE A

TERM LOAN, REPAYMENTS AND CONVERSION OF TERM LOAN

Date	Amount of Term Loans	Amount of Principal of Term Loans Repaid or Converted	Unpaid Principal Balance of Term Loans	Notation Made By

Exhibit 10.9

WAITR HOLDINGS INC.
1510 West Loop South
Houston, Texas 77027

Luxor Capital Group, LP
1114 Avenue of the Americas, 28th Floor
New York, New York 10036

November 15, 2018

Ladies and Gentlemen,

Reference is made to that certain Credit Agreement, dated as of November 15, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Waitr Holdings Inc. ("Company"), the lenders listed on the signature pages hereto ("Original Lenders"), the other lenders from time to time party thereto (each, together with Original Lenders, a "Lender") and Luxor Capital Group, LP, as administrative agent ("Administrative Agent"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Credit Agreement.

The Company, Administrative Agent and Original Lenders hereby agree that:

1. Registration of Notes.

   a. Lenders holding Term Loan Exposure representing more than 50% of the aggregate Term Loan Exposure of all Lenders may, by written notice to the Company and Administrative Agent given at any time after the date hereof (an "Exchange Notice"), require the Company to (i) exchange all or any portion of their Notes for New Notes (as defined below) and (ii) register the resale of such New Notes in accordance with Section 1(d) below; it being understood and agreed that Lenders shall only be permitted to give one Exchange Notice.

   b. If an Exchange Notice is given, the Company shall promptly (and in any event within thirty (30) Business Days) prepare a final form of indenture (the "Indenture") that complies with the Trust Indenture Act of 1939, as amended (the "TIA"), with a trustee reasonably acceptable to Administrative Agent, pursuant to which Indenture new convertible notes of the Company (the "New Notes") shall be issued in exchange for Notes, in each case with covenants, events of default and other terms that are customary for publicly traded convertible notes under an indenture under the TIA, including customary publicly traded convertible note covenants such as requiring the repayment of any interest and principal and delivery of any underlying securities issuable upon conversion in each case in accordance with the terms of the New Notes, requiring the Company to maintain an office where the New Notes may be surrendered, requiring the delivery of certain customary information, reports and compliance certificates to the trustee under the Indenture and requiring the Company to give notice of any default or event of default to the trustee, and such other or different terms as may be agreed to between the Company and Administrative Agent.

c. At or prior to the Company's entry into the Indenture, Administrative Agent shall send notice to the Lenders, who shall have 20 business days after receipt thereof to notify Administrative Agent of the principal amount of the Notes each such Lender desires to have the Company exchange for New Notes; provided that the Company shall not be required to exchange and register Notes of any Lender in any denomination of less than $2,500,000. Administrative Agent shall promptly notify the Company of the aggregate amount of New Notes to be issued and the Lenders requesting such registration.

d. Upon the issuance of New Notes, the Company shall also enter into a registration rights agreement, consistent with the terms of the Registration Rights Agreement, with the Lenders who are exchanging Notes for New Notes, with any necessary changes to such registration rights agreement to be agreed to between the Company and Administrative Agent, and the Company shall register the resale of the New Notes to be issued under the Indenture under an effective shelf registration statement in accordance with the terms of such registration rights agreement.

e. At or immediately after the Company's entry into the Indenture, the Company shall exchange any Notes surrendered by the Lenders who have elected to exchange such Notes in accordance with Section 1(c) above for New Notes issued under the Indenture, which New Notes shall be at the same Conversion Rate (as defined in the Notes) as the then-applicable Conversion Rate of such Notes, have the same interest rate and maturity date as the interest rate and Term Loan Maturity Date of the Notes and shall be for the same principal amount as the principal amount of such Notes.

f. The Company shall bear all third-party costs and expenses in connection with the negotiation of the Indenture, the exchange of Notes for New Notes and the issuance and registration of the New Notes, including one counsel for the recipients of New Notes selected by such recipients, other than such costs and expenses as are to be paid by the Lenders pursuant to the registration rights agreement.

2. Governing Law. This letter agreement shall be governed in all respects by the internal laws of the State of Delaware as applied to agreements entered into among Delaware residents to be performed entirely within Delaware, without regard to principles of conflicts of law.

3. Jury Trial; Consent to Jurisdiction. Any judicial proceeding brought with respect to this letter agreement must be brought in any court of competent jurisdiction in the State of Delaware, and, by execution and delivery of this letter agreement, each party (a) accepts, generally and unconditionally, the exclusive jurisdiction of such courts and any related appellate court, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this letter agreement; and (b) irrevocably waives any objection it may now or hereafter have as to the venue of any such suit, action or proceeding brought in such a court or that such court is an inconvenient forum. Nothing in this Section 3, however, shall affect the right of any party to serve legal process in any other manner permitted by law or at equity. Each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or at equity. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATED TO THIS LETTER AGREEMENT.**

4. Counterparts. This letter agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties that execute such counterparts, and all of which together shall constitute one instrument.

5. Telecopy Execution and Delivery. A facsimile, telecopy, portable document format (".PDF") or other reproduction of this letter agreement may be executed by one or more parties hereto and delivered by such party by facsimile, ..PDF, or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this letter agreement as well as any facsimile, telecopy, .PDF, or other reproduction hereof.

[Remainder of Page Intentionally Left Blank]

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

WAITR HOLDINGS INC.

By: /s/ Christopher Meaux
Name: Christopher Meaux
Title: Chief Executive Officer

LUXOR CAPITAL GROUP, LP,
as Administrative Agent

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

LUXOR CAPITAL PARTNERS, LP,

By: Luxor Capital Group, LP,
its Investment Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP,

By: Luxor Capital Group, LP,
its Investment Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

LUXOR WAVEFRONT, LP,

By: Luxor Capital Group, LP,
its Investment Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

LUGARD ROAD CAPITAL MASTER FUND, LP,

By: Luxor Capital Group, LP,
its Investment Manager

By: /s/ Norris Nissim
Name: Norris Nissim
Title: General Counsel

Exhibit 10.10

Execution Version

Executive Employment Agreement

This Employment Agreement (the "**Agreement**") is made and entered into as of November 15, 2018 by and between Chris Meaux ("**Executive**") and Waitr Holdings Inc., a corporation organized under the laws of the State of Delaware (the "**Company**").

WHEREAS, the Company is party to that certain Agreement and Plan of Merger, dated as of May 16, 2018 (the "**Merger Agreement**"), by and among the Company (f/k/a Landcadia Holdings, Inc.), Landcadia Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of the Company ("**Merger Sub**"), and Waitr Incorporated, a Louisiana corporation ("**Waitr**"), pursuant to which Waitr will merge with and into Merger Sub (the "**Transaction**"); and

WHEREAS, in connection with the Transaction, the Company desires to employ Executive on the terms and conditions set forth herein; and

WHEREAS, Executive desires to be employed by the Company on such terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the parties agree as follows:

1. Term. Executive's employment hereunder shall be effective as of the date of the closing of the Transaction (the "**Effective Date**") and shall continue until such time as Executive's employment with the Company terminates pursuant to Section 5 of this Agreement. Notwithstanding anything to the contrary herein, if the Merger Agreement terminates for any reason before the Transaction is consummated, all of the provisions of this Agreement will terminate and there will be no liability of any kind under this Agreement. The period during which Executive is employed by the Company hereunder is hereinafter referred to as the "**Employment Term**."

2. Position and Duties.

2.1 Position. During the Employment Term, Executive shall serve as the Chief Executive Officer of the Company, reporting to Board of Directors of the Company (the "**Board**"). In such position, Executive shall have such duties, authority, and responsibilities as shall be determined from time to time by the Board, which duties, authority, and responsibilities are consistent with Executive's position. Executive shall, if requested, also serve as a member of the Board or as an officer or director of any affiliate of the Company for no additional compensation.

2.2 Duties. During the Employment Term, Executive shall devote substantially all of his business time and attention to the performance of Executive's duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Board. Notwithstanding the foregoing, Executive will be permitted to (a) with the prior written consent of the Board (which consent will not be unreasonably withheld or delayed), act or serve as a director, trustee, committee member, or principal of any type of business, civic, or charitable organization as long as such activities are disclosed in writing to the Board, and (b) purchase or own membership interest or shares in any publicly traded securities of any corporation; provided that, such ownership represents a passive investment and that Executive is not a controlling person of, or a member of a group that controls, such company or publicly traded corporation; provided further that, the activities described in clauses (a) and (b) do not interfere with the performance of Executive's duties and responsibilities to the Company as provided hereunder, including, but not limited to, the obligations set forth in Section 2 hereof and do not conflict or compete in any way with the business of the Company or any of its subsidiaries or affiliates.

3. Place of Performance. The principal place of Executive's employment shall be the Company's principal executive office currently located in Lafayette, Louisiana; provided that, Executive may be required to travel on Company business during the Employment Term.

4. Compensation.

4.1 Base Salary. During the Employment Term, the Company shall pay Executive an annual rate of base salary of $450,000 in periodic installments, less applicable deductions and withholdings, in accordance with the Company's customary payroll practices and applicable wage payment laws, but no less frequently than monthly. Commencing on or before May 1, 2019, Executive's base salary shall be reviewed at least annually by the Board and the Board may, but shall not be required to, increase the base salary during the Employment Term. However, Executive's base salary may not be decreased during the Employment Term other than as part of an across-the-board salary reduction that applies in the same manner to all senior executives. Executive's annual base salary, as in effect from time to time, is hereinafter referred to as "**Base Salary**". The parties acknowledge and agree that a portion of Executive's Base Salary shall constitute consideration for Executive's compliance with the restrictions and covenants set forth in Section 8 of this Agreement.

4.2 Annual Bonus.

(a) For each complete calendar year during the Employment Term, Executive shall be eligible to receive an annual bonus (the "**Annual Bonus**"). As of the Effective Date, Executive's annual target bonus opportunity shall be equal to 100% of Base Salary (the "**Target Bonus**"), based upon the attainment of certain performance metrics established by the Board or the Compensation Committee of the Board (the "**Compensation Committee**"), if such committee is established by the Board. For the period beginning on the Effective Date and ending on the last day of the applicable calendar year (and in any other calendar year in which Executive takes a leave of absence), Executive, in the discretion of the Board, shall be eligible to receive a prorated Annual Bonus (calculated as the Annual Bonus that would have been paid for the entire calendar year multiplied by a fraction the numerator of which is equal to the number of days Executive worked in the applicable calendar year and the denominator of which is equal to the total number of days in such year).

(b) The Annual Bonus, if any, will be paid within sixty (60) days after the end of the applicable calendar year.

(c) Except as otherwise provided in Section 5, in order to be eligible to receive an Annual Bonus, Executive must be employed by the Company on the last day of the applicable calendar year to which such Annual Bonus relates.

4.3 Equity Award. As soon as practicable following the Effective Date, Executive shall receive 250,000 shares of restricted stock (the "**Award**") under the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "**Incentive Plan**"). The Award issued to Executive will vest in three (3) equal installments over a three-year service period following the grant date. The Award shall be in accordance with the terms and conditions of the Incentive Plan and a written award agreement. All other terms and conditions applicable to the Award shall be determined by the Board or the Compensation Committee.

4.4 Fringe Benefits and Perquisites. During the Employment Term, Executive shall be entitled to fringe benefits and perquisites consistent with the practices of the Company and governing benefit plan requirements (including plan eligibility provisions), and to the extent the Company provides similar benefits or perquisites (or both) to similarly situated executives of the Company, including without limitation, (a) a car allowance of $1,500 per month, and (b) a technology allowance of $600 per month.

4.5 Employee Benefits. During the Employment Term, Executive shall be entitled to participate in all employee benefit plans, practices, and programs maintained by the Company, as in effect from time to time (collectively, "**Employee Benefit Plans**"), to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company shall reimburse Executive in an amount equal to $800 per month for the monthly premiums due under the Employee Benefit Plans for himself and his dependents. The Company reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law.

4.6 Vacation; Paid Time-Off. Executive shall receive vacation and other paid time-off in accordance with the Company's policies for executive officers as such policies may exist from time to time.

4.7 Relocation Expenses. In the event the Company's headquarters are moved and Executive agrees to relocate, the Company shall pay, or reimburse Executive for, all reasonable relocation expenses incurred by Executive relating to his relocation.

4.8 Business Expenses. Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by Executive in connection with the performance of Executive's duties hereunder in accordance with the Company's expense reimbursement policies and procedures.

4.9 Legal Fees Incurred in Negotiating the Agreement. The Company shall pay or Executive shall be reimbursed for Executive's reasonable legal fees incurred in negotiating and drafting this Agreement up to a maximum of $20,000, provided that any such payment shall be made on or before December 15 of the calendar year immediately following the Effective Date.

4.10 Indemnification.

(a) In the event that Executive is made a party or threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a "**Proceeding**"), other than any Proceeding initiated by Executive or the Company related to any contest or dispute between Executive and the Company or any of its affiliates with respect to this Agreement or Executive's employment hereunder, by reason of the fact that Executive is or was a director or officer of the Company, or any affiliate of the Company, or is or was serving at the request of the Company as a director, officer, member, employee, or agent of another corporation or a partnership, joint venture, trust, or other enterprise, Executive shall be indemnified and held harmless by the Company to the maximum extent permitted under applicable law and the Company's bylaws from and against any liabilities, costs, claims, and expenses, including all costs and expenses incurred in defense of any Proceeding (including attorneys' fees). Costs and expenses incurred by Executive in defense of such Proceeding (including attorneys' fees) shall be paid by the Company in advance of the final disposition of such litigation upon receipt by the Company of: (i) a written request for payment; (ii) appropriate documentation evidencing the incurrence, amount, and nature of the costs and expenses for which payment is being sought; and (iii) an undertaking adequate under applicable law made by or on behalf of Executive to repay the amounts so paid if it shall ultimately be determined that Executive is not entitled to be indemnified by the Company under this Agreement.

(b) During the Employment Term and for a period of six (6) years thereafter, the Company or any successor to the Company shall purchase and maintain, at its own expense, directors' and officers' liability insurance providing coverage to Executive on terms that are no less favorable than the coverage provided to other directors and similarly situated executives of the Company.

4.11 Clawback Provisions. Notwithstanding any other provisions in this Agreement to the contrary, any incentive-based compensation, or any other compensation, paid to Executive pursuant to this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).

5. Termination of Employment. The Employment Term and Executive's employment hereunder may be terminated by either the Company or Executive at any time and for any reason; provided that, unless otherwise provided herein, either party shall be required to give the other party at least thirty (30) days advance written notice of any termination of Executive's employment. The thirty (30) day notice period shall be inclusive of and run concurrently with any mandatory notice periods provided for under any applicable law. Upon termination of Executive's employment during the Employment Term, Executive shall be entitled to the following compensation and benefits from the Company or any of its affiliates.

5.1 For Cause or Without Good Reason.

(a) Executive's employment hereunder may be terminated by the Company for Cause or by Executive without Good Reason. If Executive's employment is terminated by the Company for Cause or by Executive without Good Reason, Executive shall be entitled to receive:

(i) any accrued but unpaid Base Salary which shall be paid on the pay date immediately following the Termination Date (as defined below) in accordance with the Company's customary payroll procedures;

(ii) reimbursement for unreimbursed business expenses properly incurred by Executive, which shall be subject to and paid in accordance with the Company's expense reimbursement policy; and

(iii) such employee benefits (including equity compensation), if any, to which Executive may be entitled under the Company's employee benefit plans as of the Termination Date; provided that, in no event shall Executive be entitled to any payments in the nature of severance or termination payments except as specifically provided herein.

Items 5.1(a)(i) through 5.1(a)(iii) are referred to herein collectively as the "**Accrued Amounts**."

(b) For purposes of this Agreement, "**Cause**" shall mean:

(i) the conviction of Executive or his plea of nolo contendere for commission of any crime constituting a felony in the jurisdiction in which committed; or any crime involving moral turpitude (whether or not a felony); or any other criminal act involving dishonesty (whether or not a felony);

(ii) Executive's commission of any act of fraud, theft, embezzlement, self-dealing, misappropriation or other malfeasance against the business of the Company or any of the Company's subsidiaries or affiliates and such conduct causes damage to the Company or any of the Company's subsidiaries or affiliates;

(iii) alcohol or illegal or controlled substance abuse by Executive that has affected the performance of Executive's duties;

(iv) Executive's gross negligence or willful misconduct in the performance of, or failure to perform, the obligations of Executive under this Agreement or the duties of employment or other engagement assigned by the Company or any of the Company's subsidiaries or affiliates, in each case which remains uncured or continues after fifteen (15) business days' notice by the Company specifying in reasonable detail the nature of the gross negligence or willful misconduct; or

(v) Executive's refusal or failure to carry out a lawful directive of the Company, its subsidiaries or the Board or their respective designees, which, in each case, causes material damage to the Company or the Company's subsidiaries or affiliates; provided, however, that in the first case of such refusal or failure, but not thereafter, the Company provided notice to Executive specifying in reasonable detail the nature of the refusal or failure and such refusal or failure remains uncured or continues at the expiration of fifteen (15) business days following such notice.

For purposes of this provision, no act or failure to act on the part of Executive shall be considered "willful" unless it is done, or omitted to be done, by Executive in bad faith or without reasonable belief that Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by Executive in good faith and in the best interests of the Company.

Termination of Executive's employment shall not be deemed to be for Cause unless and until the Company delivers to Executive a copy of a resolution duly adopted by the affirmative vote of a majority of the Board (after reasonable written notice is provided to Executive and Executive is given an opportunity, together with counsel, to be heard before the Board), finding that Executive has engaged in the conduct described in any of (i)-(v) above. Except for a failure, breach, or refusal which, by its nature, cannot reasonably be expected to be cured, Executive shall have ten (10) business days from the delivery of written notice by the Company within which to cure any acts constituting Cause; provided however, that, if the Company reasonably expects irreparable injury from a delay of ten (10) business days, the Company may give Executive notice of such shorter period within which to cure as is reasonable under the circumstances, which may include the termination of Executive's employment without notice and with immediate effect. The Company may place Executive on paid leave for up to sixty (60) days while it is determining whether there is a basis to terminate Executive's employment for Cause. Any such action by the Company will not constitute Good Reason.

(c) For purposes of this Agreement, "**Good Reason**" shall mean the occurrence of any of the following, in each case during the Employment Term without Executive's written consent:

(i) a failure by the Company to promptly pay compensation when due and payable to Executive in connection with employment;

(ii) a material reduction in Executive's duties or responsibilities or Executive's removal from such duties or responsibilities, if applicable;

(iii) a material reduction by the Company in the kind or level of employee benefits to which Executive is entitled immediately prior to such reduction, provided that such employee benefits were previously approved by the Board, if materially different than the employee benefits to which other employees of the Company are entitled to, with the result that Executive's overall benefits package is significantly reduced, unless such material reduction constitutes an across-the-board benefits reduction applicable to all similarly situated employees at the Company; or

(iv) Executive's required relocation to a facility located fifty (50) miles or more from Lafayette, Louisiana.

Notwithstanding the foregoing, Executive cannot terminate his employment for Good Reason unless he has provided written notice to the Company of the existence of the circumstances allegedly providing grounds for termination for Good Reason within ninety (90) days of the initial existence of such grounds and the Company has had at least thirty (30) days from the date on which such notice is provided to cure such circumstances. If Executive does not terminate his employment for Good Reason within one hundred and eighty (180) days after the first occurrence of the applicable grounds, then Executive will be deemed to have waived his right to terminate for Good Reason with respect to such grounds.

5.2 Without Cause or for Good Reason. The Employment Term and Executive's employment hereunder may be terminated by Executive for Good Reason or by the Company without Cause. In the event of such termination, Executive shall be entitled to receive the following:

(a) The Accrued Amounts;

(b) Any accrued but unpaid Annual Bonus with respect to any completed calendar year immediately preceding the Termination Date, which shall be paid on the otherwise applicable payment date except to the extent payment is otherwise deferred pursuant to any applicable deferred compensation arrangement;

(c) One and one-half (1.5) times Executive's Base Salary as in effect immediately prior to the Termination Date;

(d) A payment equal to the product of (i) the Annual Bonus, if any, that Executive would have earned for the fiscal year in which the Termination Date (as determined in accordance with Section 5.6) occurs based on actual achievement of the applicable performance goals for such year and (ii) a fraction, the numerator of which is the number of days Executive was employed by the Company during the year of termination and the denominator of which is the number of days in such year (the "**Pro-Rata Bonus**"). This amount shall be paid on the date that annual bonuses are paid to similarly situated executives, but in no event later than two and-one-half (2 1/2) months following the end of the calendar year in which the Termination Date occurs;

(e) If Executive timely and properly elects health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**"), the Company shall reimburse Executive for the monthly COBRA premiums paid by Executive for himself and his dependents (the "**COBRA Payments**"). Such reimbursement shall be paid to Executive on the first day of the month immediately following the month in which Executive timely remits the premium payment. Executive shall be eligible to receive such reimbursement until the earliest of: (i) the eighteen-month anniversary of the Termination Date; (ii) the date Executive is no longer eligible to receive COBRA continuation coverage; and (iii) the date on which Executive receives substantially similar coverage from another employer or other source. Notwithstanding the foregoing, if the Company's making payments under this Section 5.2(e) would violate the nondiscrimination rules applicable to non-grandfathered plans under the Affordable Care Act (the "**ACA**"), or result in the imposition of penalties under the ACA and the related regulations and guidance promulgated thereunder), the parties agree to reform this Section 5.2(e) in a manner as is necessary to comply with the ACA.

(f) The Award will vest in full and the treatment of any other outstanding equity awards shall be determined in accordance with the terms of the Incentive Plan and the applicable award agreements.

The receipt of these amounts are subject to Executive's compliance with Section 6, Section 7, Section 8, and Section 9 of this Agreement and his execution of a release of claims in favor of the Company, its affiliates and their respective officers and directors in substantially the form attached hereto as Exhibit A (the "**Release**") and such Release becoming effective within thirty (30) days following the Termination Date (such thirty-day period, the "**Release Execution Period**").

5.3 Death or Disability.

(a) Executive's employment hereunder shall terminate automatically upon Executive's death during Employment Term, and the Company may terminate Executive's employment on account of Executive's Disability.

(b) If Executive's employment is terminated during the Employment Term on account of Executive's death or Disability, Executive (or Executive's estate and/or beneficiaries, as the case may be) shall be entitled to receive the following:

(i) the Accrued Amounts; and

(ii) any post-employment benefits due under the terms and conditions of the Employee Benefit Plans.

Notwithstanding any other provision contained herein, all payments made in connection with Executive's Disability shall be provided in a manner which is consistent with federal and state law.

(c) For purposes of this Agreement, "**Disability**" shall mean Executive's inability to substantially perform his duties hereunder, even with reasonable accommodation, due to a medically determinable physical or mental illness or injury which lasts for, or is reasonably expected to last for, ninety (90) consecutive days or one hundred twenty (120) days in any 12-month period, whether or not consecutive. The Board reserves the right, in good faith, to make the determination of Disability under this Agreement based upon information supplied by Executive and/or his medical personnel, as well as information from medical personnel (or others) selected by the Board or the Company's insurers, which determination shall be conclusive as of its date absent fraud or manifest error.

5.4 Change in Control Termination.

(a) Notwithstanding any other provision contained herein, if Executive's employment hereunder is terminated by Executive for Good Reason or by the Company without Cause (other than on account of Executive's death or Disability), in each case, within twelve (12) months following a Change in Control, Executive shall be entitled to receive the Accrued Amounts and subject to Executive's compliance with Section 6, Section 7, Section 8 and Section 9 of this Agreement and his execution of a Release which becomes effective within thirty (30) days following the Termination Date, Executive shall be entitled to receive the following:

(i) a lump sum payment equal to two (2) times the sum of Executive's Base Salary, which shall be paid within thirty (30) days following the Termination Date; provided that, if the Release Execution Period begins in one taxable year and ends in another taxable year, payment shall not be made until the beginning of the second taxable year;

(ii) a lump sum payment equal to Executive's Target Bonus for the calendar year in which the Termination Date (as determined in accordance with Section 5.6) occurs (or if greater, the year in which the Change in Control occurs), which shall be paid within sixty (60) days following the Termination Date; provided that, if the Release Execution Period begins in one taxable year and ends in another taxable year, payment shall not be made until the beginning of the second taxable year; and

(iii) the Award will vest in full and the treatment of any other outstanding equity awards shall be determined in accordance with the terms of the Incentive Plan and the applicable award agreements.

(b) If Executive timely and properly elects health plan continuation coverage under COBRA, the Company shall reimburse Executive for the monthly COBRA premium paid by Executive for himself and his dependents. Such reimbursement shall be paid to Executive on the first (1^{st}) of the month immediately following the month in which Executive timely remits the premium payment. Executive shall be eligible to receive such reimbursement until the earliest of: (i) the eighteen-month anniversary of the Termination Date; (ii) the date Executive is no longer eligible to receive COBRA continuation coverage; and (iii) the date on which Executive receives substantially similar coverage from another employer or other source. Notwithstanding the foregoing, if the Company's payments under this Section 5.4(b) would violate the nondiscrimination rules applicable to non-grandfathered, insured group plans under the ACA, or result in the imposition of penalties under the ACA, the parties agree to reform this Section 5.4(b) in a manner as is necessary to comply with the ACA.

(c) For purposes of this Agreement, "**Change in Control**" shall have the meaning set forth under the Incentive Plan.

5.5 Notice of Termination. Any termination of Executive's employment hereunder by the Company or by Executive during the Employment Term (other than termination pursuant to Section 5.3(a) on account of Executive's death) shall be communicated by written notice of termination ("**Notice of Termination**") to the other party hereto in accordance with Section 25. The Notice of Termination shall specify:

(a) the termination provision of this Agreement relied upon;

(b) to the extent applicable, the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated; and

(c) the applicable Termination Date.

5.6 Termination Date. Executive's "**Termination Date**" shall be:

(a) if Executive's employment hereunder terminates on account of Executive's death, the date of Executive's death;

(b) if Executive's employment hereunder is terminated on account of Executive's Disability, the date that it is determined that Executive has a Disability;

(c) if the Company terminates Executive's employment hereunder for Cause, the date the Notice of Termination is delivered to Executive;

(d) if the Company terminates Executive's employment hereunder without Cause, the date specified in the Notice of Termination, which shall be no less than forty-five (45) days following the date on which the Notice of Termination is delivered; provided that, the Company shall have the option to provide Executive with a lump sum payment equal to forty-five (45) days' Base Salary in lieu of such notice, which shall be paid in a lump sum on Executive's Termination Date and for all purposes of this Agreement, Executive's Termination Date shall be the date on which such Notice of Termination is delivered; and

(e) if Executive terminates his employment hereunder with or without Good Reason, the date specified in Executive's Notice of Termination, which shall be no less than forty-five (45) days following the date on which the Notice of Termination is delivered; provided that, the Company may waive all or any part of the forty-five (45) day notice period for no consideration by giving written notice to Executive and for all purposes of this Agreement, Executive's Termination Date shall be the date determined by the Company.

Notwithstanding anything contained herein, the Termination Date shall not occur until the date on which Executive incurs a "separation from service" within the meaning of Section 409A (as defined in Section 23 of this Agreement).

5.7 Mitigation. In no event shall Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Executive under any of the provisions of this Agreement and except as provided in Section 5.2(e), any amounts payable pursuant to this Section 5 shall not be reduced by compensation Executive earns on account of employment with another employer.

5.8 Resignation of All Other Positions. Upon termination of Executive's employment hereunder for any reason, Executive agrees to resign, effective on the Termination Date, from all positions that Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

5.9 Section 280G.

(a) Notwithstanding any other provision of this Agreement or any other plan, arrangement or agreement to the contrary, if any of the payments or benefits received or to be received by Executive (including, without limitation, any payment or benefits received in connection with a Change in Control or Executive's termination of employment, whether pursuant to the terms of this Agreement or any other plan, arrangement, or agreement, or otherwise) (all such payments collectively referred to herein as the "**280G Payments**") constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the **"Code"**) and will be subject to the excise tax imposed under Section 4999 of the Code (the "**Excise Tax**"), the Company shall either (i) reduce (but not below zero) such payments or benefits received or to be received by Executive so that the aggregate present value of the payments and benefits received by Executive is $1.00 less than the amount which would otherwise cause Executive to incur an Excise Tax, or (ii) be paid in full, whichever results in the greatest net after-tax payment to Executive.

(b) All calculations and determinations under this Section 5.9 shall be made by an independent accounting firm or independent tax counsel appointed by the Company (the "**Tax Counsel**") whose determinations shall be conclusive and binding on the Company and Executive for all purposes. For purposes of making the calculations and determinations required by this Section 5.9, the Tax Counsel may rely on reasonable, good faith assumptions and approximations concerning the application of Section 280G and Section 4999 of the Code. The Company and Executive shall furnish the Tax Counsel with such information and documents as the Tax Counsel may reasonably request in order to make its determinations under this Section 5.9. The Company shall bear all costs the Tax Counsel may reasonably incur in connection with its services.

6. Cooperation. The parties agree that certain matters in which Executive will be involved during the Employment Term may necessitate Executive's cooperation in the future. Accordingly, following the termination of Executive's employment for any reason, to the extent reasonably requested by the Board, Executive shall cooperate with the Company in connection with matters arising out of Executive's service to the Company; provided that, the Company shall make reasonable efforts to minimize disruption of Executive's other activities. The Company shall reimburse Executive for reasonable expenses incurred in connection with such cooperation and, to the extent that Executive is required to spend substantial time on such matters, the Company shall compensate Executive at an hourly rate based on Executive's Base Salary on the Termination Date.

7. Confidential Information. Executive understands and acknowledges that during the Employment Term, he will have access to and learn about Confidential Information, as defined below.

7.1 Confidential Information Defined.

(a) Definition.

For purposes of this Agreement, "**Confidential Information**" includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or to and information that is used, developed or obtained by the Company or any of its affiliates (collectively, the "**Company Group**") in connection with its business, including, but not limited to, information, observations and data obtained by Executive during Executive's employment with the Company concerning: business affairs, business processes, practices, products, methods, policies, plans, publications, documents, research, operations, services, fees, pricing structures, analyses, photographs, strategies, techniques, agreements, contracts, terms of agreements, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, work-in-process, databases, manuals, records, articles, systems, material, sources of material, supplier information, vendor information, financial information, results, accounting information, accounting records, legal information, marketing information, advertising information, pricing information, credit information, design information, payroll information, staffing information, personnel information, employee lists, supplier lists, vendor lists, developments, reports, internal controls, security procedures, graphics, drawings, sketches, market studies, sales information, revenue, costs, formulae, notes, communications, algorithms, product plans, designs, styles, models, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, client information, client lists, restaurant partner list of the Company Group or its businesses or any existing or prospective customer, supplier, investor or other associated third party, or of any other person or entity that has entrusted information to the Company Group in confidence.

Executive understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

Executive understands and agrees that Confidential Information includes information developed by him in the course of his employment by the Company as if the Company furnished the same Confidential Information to Executive in the first instance. Confidential Information shall not include information that is generally available to and known by the public at the time of disclosure to Executive; provided that, such disclosure is through no direct or indirect fault of Executive or person(s) acting on Executive's behalf.

(b) Company Creation and Use of Confidential Information.

Executive understands and acknowledges that the Company has invested, and continues to invest, substantial time, money, and specialized knowledge into developing its resources, creating a customer base, generating customer and potential customer lists, training its employees, and improving its offerings in the field of restaurant delivery services. Executive understands and acknowledges that as a result of these efforts, the Company has created, and continues to use and create Confidential Information. This Confidential Information provides the Company with a competitive advantage over others in the marketplace.

(c) Disclosure and Use Restrictions.

Executive agrees and covenants: (i) to treat all Confidential Information as strictly confidential; (ii) not to directly or indirectly disclose, publish, communicate, or make available Confidential Information, or allow it to be disclosed, published, communicated, or made available, in whole or part, to any entity or person whatsoever (including other employees of the Company) not having a need to know and authority to know and use the Confidential Information in connection with the business of the Company and, in any event, not to anyone outside of the direct employ of the Company except as required in the performance of Executive's authorized employment duties to the Company or with the prior consent of the Board acting on behalf of the Company in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent); and (iii) not to access or use any Confidential Information, and not to copy any documents, records, files, media, or other resources containing any Confidential Information, or remove any such documents, records, files, media, or other resources from the premises or control of the Company, except as required in the performance of Executive's authorized employment duties to the Company or with the prior consent of the Board acting on behalf of the Company in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent). Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. Executive shall promptly provide written notice of any such order to the Board.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 ("DTSA"). Notwithstanding any other provision of this Agreement:

(i) Executive will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that:

(A) is made (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (2) solely for the purpose of reporting or investigating a suspected violation of law; or

(B) is made in a complaint or other document filed under seal in a lawsuit or other proceeding.

(ii) If Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the Company's trade secrets to Executive's attorney and use the trade secret information in the court proceeding if Executive:

(A) files any document containing trade secrets under seal; and

(B) does not disclose trade secrets, except pursuant to court order.

Executive understands and acknowledges that his obligations under this Agreement with regard to any particular Confidential Information shall commence immediately upon Executive first having access to such Confidential Information (whether before or after he begins employment by the Company) and shall continue during and after his employment by the Company until such time as such Confidential Information has become public knowledge other than as a result of Executive's breach of this Agreement or breach by those acting in concert with Executive or on Executive's behalf.

8. Restrictive Covenants.

8.1 Acknowledgement. Executive understands that the nature of Executive's position gives him access to and knowledge of Confidential Information and places him in a position of trust and confidence with the Company. Executive understands and acknowledges that the intellectual services he provides to the Company are unique, special, or extraordinary. Executive further understands and acknowledges that the Company's ability to reserve these for the exclusive knowledge and use of the Company is of great competitive importance and commercial value to the Company, and that improper use or disclosure by Executive is likely to result in unfair or unlawful competitive activity.

8.2 Non-Competition. Because of the Company's legitimate business interest as described herein and the good and valuable consideration offered to Executive, during the Employment Term and for the twenty-four (24) month period beginning on the last day of Executive's employment with the Company, for any reason or no reason and whether employment is terminated at the option of Executive or the Company, Executive agrees and covenants not to engage in Prohibited Activity within the State of Louisiana (the "**Restricted Territory**").

For purposes of this Section 8, "**Prohibited Activity**" is activity in which Executive contributes his knowledge, directly or indirectly, in whole or in part, as an employee, employer, owner, operator, manager, advisor, consultant, agent, employee, partner, director, stockholder, officer, volunteer, intern, or any other similar capacity to an entity engaged in the same or similar business as the Company, including those engaged in the business of food delivery. Prohibited Activity also includes activity that may require or inevitably requires disclosure of trade secrets, proprietary information, or Confidential Information.

The Company regards the following as its primary, but not exclusive, competitors engaged in the business of food delivery: Ubereats, Postmates, GrubHub and DoorDash.

Nothing herein shall prohibit Executive from purchasing or owning less than five percent (5%) of the publicly traded securities of any corporation, provided that such ownership represents a passive investment and that Executive is not a controlling person of, or a member of a group that controls, such corporation.

This Section 8 does not, in any way, restrict or impede Executive from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. Executive shall promptly provide written notice of any such order to the Board.

8.3 Non-Solicitation of Employees. Executive agrees and covenants not to directly or indirectly solicit, hire, recruit, attempt to hire or recruit, or induce the termination of employment of any employee of the Company during the Employment Term and a twenty-four (24) month period beginning on the last day of Executive's employment with the Company.

8.4 Non-Solicitation of Customers. Executive understands and acknowledges that because of Executive's experience with and relationship to the Company, he will have access to and learn about much or all of the Company's customer information. "**Customer Information**" includes, but is not limited to, names, phone numbers, addresses, e-mail addresses, order history, order preferences, chain of command, pricing information, and other information identifying facts and circumstances specific to the customer and relevant to sales and services.

Executive understands and acknowledges that loss of this customer relationship and/or goodwill will cause significant and irreparable harm to the Company.

Executive agrees and covenants, during the Employment Term and the twenty-four (24) month period beginning on the last day of Executive's employment with the Company, not to directly or indirectly solicit, contact (including but not limited to e-mail, regular mail, express mail, telephone, fax, and instant message), attempt to contact, or meet with the Company's current customers located in the State of Louisiana or the State of California for purposes of offering or accepting goods or services similar to or competitive with those offered by the Company.

9. Non-Disparagement. Executive agrees and covenants that he will not at any time, directly or indirectly, make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the Company or its businesses, or any of its employees, officers, shareholders, members or advisors, or any member of the Board.

This Section 9 does not, in any way, restrict or impede Executive from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. Executive shall promptly provide written notice of any such order to the Board.

The Company agrees and covenants that it shall cause its officers and directors to refrain from making any defamatory or disparaging remarks, comments, or statements concerning Executive to any third parties.

10. Acknowledgement. Executive acknowledges and agrees that the services to be rendered by him to the Company are of a special and unique character; that Executive will obtain knowledge and skill relevant to the Company's industry, methods of doing business and marketing strategies by virtue of Executive's employment; and that the restrictive covenants and other terms and conditions of this Agreement are reasonable and reasonably necessary to protect the legitimate business interest of the Company.

Executive further acknowledges that the amount of his compensation reflects, in part, his obligations and the Company's rights under Section 7, Section 8, and Section 9 of this Agreement; that he has no expectation of any additional compensation, royalties or other payment of any kind not otherwise referenced herein in connection herewith; and that he will not be subject to undue hardship by reason of his full compliance with the terms and conditions of Section 7, Section 8, and Section 9 of this Agreement or the Company's enforcement thereof.

11. Remedies. In the event of a breach or threatened breach by Executive of Section 7, Section 8, or Section 9 of this Agreement, Executive hereby consents and agrees that the Company shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief.

12. Arbitration. Any dispute, controversy, or claim arising out of or related to this Agreement, except for disputes arising under Section 7, Section 8, or Section 9 of this Agreement (including, without limitation, any claim for injunctive relief), or its interpretation, application, implementation, breach or enforcement which the parties hereto are unable to resolve by mutual agreement, shall be settled by submission by either Executive or the Company of the controversy, claim or dispute to binding arbitration in Lafayette, Louisiana (unless the parties hereto agree in writing to a different location), before a single arbitrator in accordance with the Employment Dispute Resolution Rules of the American Arbitration Association then in effect. In any such arbitration proceeding the parties hereto agree to provide all discovery deemed necessary by the arbitrator. The decision and award made by the arbitrator shall be accompanied by a reasoned opinion, and shall be final, binding and conclusive on all parties hereto for all purposes, and judgment may be entered thereon in any court having jurisdiction thereof. The prevailing party in such arbitration shall be entitled to reimbursement from the non-prevailing party for the totality of the arbitrator's, administrative, and reasonable legal fees and costs. Upon the request of any of the parties hereto, at any time prior to the beginning of the arbitration hearing the parties may attempt in good faith to settle the dispute by mediation administered by the American Arbitration Association.

13. Proprietary Rights.

13.1 Work Product. Executive acknowledges and agrees that all right, title, and interest in and to all writings, works of authorship, technology, inventions, discoveries, processes, techniques, methods, ideas, concepts, research, proposals, materials, and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, amended, conceived, or reduced to practice by Executive individually or jointly with others during the period of his employment by the Company and relate in any way to the business or contemplated business, products, activities, research, or development of the Company or result from any work performed by Executive for the Company (in each case, regardless of when or where prepared or whose equipment or other resources is used in preparing the same), all rights and claims related to the foregoing, and all printed, physical and electronic copies, and other tangible embodiments thereof (collectively, "**Work Product**"), as well as any and all rights in and to US and foreign (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how, and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights, all improvements thereto and all similar or equivalent rights or forms of protection in any part of the world (collectively, "**Intellectual Property Rights**"), shall be the sole and exclusive property of the Company.

For purposes of this Agreement, Work Product includes, but is not limited to, Company information, including plans, publications, research, strategies, techniques, agreements, documents, contracts, terms of agreements, negotiations, know-how, computer programs, computer applications, software design, web design, work in process, databases, manuals, results, developments, reports, graphics, drawings, sketches, market studies, formulae, notes, communications, algorithms, product plans, product designs, styles, models, audiovisual programs, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, client information, customer lists, client lists, manufacturing information, marketing information, advertising information, and sales information.

13.2 Work Made for Hire; Assignment. Executive acknowledges that, by reason of being employed by the Company at the relevant times, to the extent permitted by law, all of the Work Product consisting of copyrightable subject matter is "work made for hire" as defined in 17 U.S.C. § 101 and such copyrights are therefore owned by the Company. To the extent that the foregoing does not apply, Executive hereby irrevocably assigns to the Company, for no additional consideration, Executive's entire right, title, and interest in and to all Work Product and Intellectual Property Rights therein, including the right to sue, counterclaim, and recover for all past, present, and future infringement, misappropriation, or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained in this Agreement shall be construed to reduce or limit the Company's rights, title, or interest in any Work Product or Intellectual Property Rights so as to be less in any respect than that the Company would have had in the absence of this Agreement.

13.3 Further Assurances; Power of Attorney. During and after his employment, Executive agrees to reasonably cooperate with the Company to (a) apply for, obtain, perfect, and transfer to the Company the Work Product as well as any and all Intellectual Property Rights in the Work Product in any jurisdiction in the world; and (b) maintain, protect and enforce the same, including, without limitation, giving testimony and executing and delivering to the Company any and all applications, oaths, declarations, affidavits, waivers, assignments, and other documents and instruments as shall be requested by the Company. Executive hereby irrevocably grants the Company power of attorney to execute and deliver any such documents on Executive's behalf in his name and to do all other lawfully permitted acts to transfer the Work Product to the Company and further the transfer, prosecution, issuance, and maintenance of all Intellectual Property Rights therein, to the full extent permitted by law, if Executive does not promptly cooperate with the Company's request (without limiting the rights the Company shall have in such circumstances by operation of law). The power of attorney is coupled with an interest and shall not be affected by Executive's subsequent incapacity.

13.4 No License. Executive understands that this Agreement does not, and shall not be construed to, grant Executive any license or right of any nature with respect to any Work Product or Intellectual Property Rights or any Confidential Information, materials, software, or other tools made available to him by the Company.

14. Security.

14.1 Security and Access. Executive agrees and covenants (a) to comply with all Company security policies and procedures as in force from time to time including without limitation those regarding computer equipment, telephone systems, voicemail systems, facilities access, monitoring, key cards, access codes, Company intranet, internet, social media and instant messaging systems, computer systems, e-mail systems, computer networks, document storage systems, software, data security, encryption, firewalls, passwords and any and all other Company facilities, IT resources and communication technologies ("**Facilities and Information Technology Resources**"); (b) not to access or use any Facilities and Information Technology Resources except as authorized by the Company; and (iii) not to access or use any Facilities and Information Technology Resources in any manner after the termination of Executive's employment by the Company, whether termination is voluntary or involuntary. Executive agrees to notify the Company promptly in the event he learns of any violation of the foregoing by others, or of any other misappropriation or unauthorized access, use, reproduction, or reverse engineering of, or tampering with any Facilities and Information Technology Resources or other Company property or materials by others.

14.2 Exit Obligations. Upon (a) voluntary or involuntary termination of Executive's employment or (b) the Company's request at any time during Executive's employment, Executive shall (i) provide or return to the Company any and all Company property, including keys, key cards, access cards, identification cards, security devices, employer credit cards, network access devices, computers, cell phones, smartphones, PDAs, pagers, fax machines, equipment, speakers, webcams, manuals, reports, files, books, compilations, work product, e-mail messages, recordings, tapes, disks, thumb drives or other removable information storage devices, hard drives, negatives, and data and all Company documents and materials belonging to the Company and stored in any fashion, including but not limited to those that constitute or contain any Confidential Information or Work Product, that are in the possession or control of Executive, whether they were provided to Executive by the Company or any of its business associates or created by Executive in connection with his employment by the Company; and (ii) delete or destroy all copies of any such documents and materials not returned to the Company that remain in Executive's possession or control, including those stored on any non-Company devices, networks, storage locations, and media in Executive's possession or control.

15. Publicity. Executive hereby irrevocably consents to any and all uses and displays, by the Company and its agents, representatives and licensees, of Executive's name, voice, likeness, image, appearance, and biographical information in, on or in connection with any pictures, photographs, audio and video recordings, digital images, websites, television programs and advertising, other advertising and publicity, sales and marketing brochures, books, magazines, other publications, CDs, DVDs, tapes, and all other printed and electronic forms and media throughout the world, at any time during or after the period of his employment by the Company, for all legitimate commercial and business purposes of the Company ("**Permitted Uses**") without further consent from or royalty, payment, or other compensation to Executive. Executive hereby forever waives and releases the Company and its directors, officers, employees, and agents from any and all claims, actions, damages, losses, costs, expenses, and liability of any kind, arising under any legal or equitable theory whatsoever at any time during or after the period of his employment by the Company, arising directly or indirectly from the Company's and its agents', representatives', and licensees' exercise of their rights in connection with any Permitted Uses.

16. Governing Law: Jurisdiction and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of the State of Louisiana without regard to conflicts of law principles and irrespective of Executive's work location. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the State of Louisiana, Parish of Lafayette. The parties hereby irrevocably submit to the non-exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

17. Entire Agreement. Unless specifically provided herein, this Agreement contains all of the understandings and representations between Executive and the Company pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. The parties mutually agree that the Agreement can be specifically enforced in court and can be cited as evidence in legal proceedings alleging breach of the Agreement.

18. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by Executive and by the Board. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

19. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement.

The parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by law.

The parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

20. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

21. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

22. Tolling. Should Executive violate any of the terms of the restrictive covenant obligations articulated herein, the obligation at issue will run from the first date on which Executive ceases to be in violation of such obligation.

23. Section 409A.

23.1 General Compliance. This Agreement is intended to comply with Section 409A of the Code and the regulations, rules and other guidance promulgated thereunder (**"Section 409A"**) or an exemption thereunder and shall be construed and administered in accordance with Section 409A. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by Executive on account of non-compliance with Section 409A.

23.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to Executive in connection with his termination of employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and Executive is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the Termination Date or, if earlier, on Executive's death (the "**Specified Employee Payment Date**"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date and interest on such amounts calculated based on the applicable federal rate published by the Internal Revenue Service for the month in which Executive's separation from service occurs shall be paid to Executive in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

23.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

(a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(b) any reimbursement of an eligible expense shall be paid to Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

24. Successors and Assigns. This Agreement is personal to Executive and shall not be assigned by Executive. Any purported assignment by Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and permitted successors and assigns.

25. Notice. Notices and all other communications provided for in this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, or by overnight carrier to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the Company:

Waitr Holdings Inc.

844 Ryan Street, Suite 300
Lake Charles, LA 70601
Attention: Board of Directors

If to Executive, to his address most recently on file with the Company.

26. Representations of Executive. Executive represents and warrants to the Company that:

(a) Executive's acceptance of employment with the Company and the performance of his duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which he is a party or is otherwise bound; and

(b) Executive's acceptance of employment with the Company and the performance of his duties hereunder will not violate any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer.

27. Withholding. The Company shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

28. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

29. Acknowledgement of Full Understanding. EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING THIS AGREEMENT.

[SIGNATURE PAGE FOLLOWS]

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

WAITR HOLDINGS INC.

By: /s/ David Pringle
Name: David Pringle
Title: Chief Financial Officer

EXECUTIVE

/s/ Chris Meaux
Chris Meaux

EXHIBIT A

SEPARATION AND RELEASE AGREEMENT

Effective this _____ day of _____, Chris Meaux, a resident of the State of Louisiana ("***you***") and Waitr Holdings Inc., a Louisiana corporation doing business in the State of Louisiana (the "***Company***") hereby enter into this Separation and Release Agreement (this "***Agreement***"). Capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings given to them in your Executive Employment Agreement with the Company dated _____ (the "***Employment Agreement***"):

1. Termination of Employment. The last date of your employment with the Company is _____, at which point the Company accepts your resignation. You will be provided your final base salary paycheck, including all pay for earned, unused paid days off, on the next regular payday in accordance with the Employment Agreement.

2. Severance Payments. The Company shall make a payment to you of $_____ as Severance under your Employment Agreement. This Severance payment will be paid to you in accordance with the Employment Agreement.

3. Release. You (on behalf of yourself and all of your heirs, assigns, legal representatives, successors-in-interest, or any person claiming through you) hereby release and discharge any claim, charge, complaint, demand, dispute, or liability of any kind that relates to or involves your employment (or termination) by the Company, any other agreement governing your relationship with the Company, and/or your separation from the Company, except those claims that may arise from any breach of this Agreement. This release and discharge includes claims which you have had or now have against the Company or against any other business that is related to the Company, including, but not limited to all of its parent, subsidiary, and affiliated companies ("***Related Entities***") or against any current or former employee, officer, director, agent, shareholder, attorney, accountant, partner, insurer, advisor, partnership, assign, successor-in-interest, joint venturer, and/or affiliated person of the Company or of any of the Related Entities ("***Related Persons***"). The claims being released by you include, but are not limited to, any and all claims for pay, benefits, damages, fees and costs, or any other relief that may be or could have been asserted in any legal or administrative proceeding under federal law, including, but not limited to, the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C.A. §§ 621 et seq., Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. §§ 2000 et seq., 42 U.S.C.A. § 1981, the Americans With Disabilities Act, as amended, 42 U.S.C.A. App. §§ 12101 et seq., the Family and Medical Leave Act, 29 U.S.C.A. §§ 2611 et seq., the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C.A. App. §§ 1.001 et seq.; or under any state or local statute or regulation, Act or law similar to the federal laws; or any claim for tortious conduct, including, but not limited to, defamation or slander, infliction of emotional distress, negligence, interference with contract, or for breach of contract or equitable relief. In short, you knowingly and voluntarily release any and all claims you have had or may have against the Company, the Related Entities and the Related Persons.

4. Governing Law. This Agreement will be construed and interpreted in accordance with the laws of the State of Louisiana, without regard to conflicts of laws principles.

5. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. An electronic (including PDF) or photocopy of this Agreement shall be as binding as the original, manually executed document.

[Signature page follows]

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

COMPANY:

WAITR HOLDINGS INC.

By: _____
Name:
Title:

EXECUTIVE:

_____

Chris Meaux

Exhibit 10.11

CONFIDENTIAL

November 15, 2018

Mr. Travis Boudreaux
1212A Melvin Dupuis Rd.
Breaux Bridge, LA 70517

Dear Travis:

On behalf of Waitr Holdings Inc. (the "Company"), I am pleased to offer you ("you" or "Employee") a position with the Company on the terms and conditions set forth below. This letter confirms to you the Company's offer of employment pursuant to previous discussions with you.

The principal terms of our offer are as follows:

1. Start Date and Responsibility. You will start working for the Company on a full-time basis, effective as of November 15, 2018. The Company is offering you the position of Director of Software Engineering of the Company. You will report directly to the Chief Executive Officer of the Company. In your position, you shall have such duties and responsibilities as are commensurate with such position at similarly-situated companies and such additional duties as may be assigned by the Chief Executive Officer of the Company from time to time.

2. Principal Place of Employment. Subject to reasonable travel, you will perform your duties on behalf of the Company at the Company's offices in Lafayette, Louisiana.

3. Compensation.

    a. Base Salary. The Company will pay you a base salary of $150,000 per year ("Base Salary") in accordance with the Company's standard payroll practices as in effect from time to time, subject to applicable withholding taxes and deductions.

    b. Discretionary Annual Bonus. For each completed fiscal year of the Company during the term of your employment, you will be eligible to earn a discretionary annual cash bonus with a target bonus opportunity equal to 60% of your Base Salary, based upon the attainment of performance metrics to be established, and as determined, by the Board of Directors of the Company in its sole discretion.

c. Equity Award. You will be entitled to receive an equity award under the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "Plan") of a stock option to purchase 50,000 shares of common stock of the Company (the "Award"). The Award will vest in three (3) equal installments over a three-year service period following the grant date and will be subject to the terms and conditions set forth in the Plan and the applicable award agreement to be entered into between the Company and you.

d. Car Allowance. You will be entitled to receive a car allowance of $1,000 per month.

4. Employee Benefits. You will be entitled to paid time off on an annual basis in accordance with the Company's policies. Holidays will be observed and paid in accordance with Company policy. You will have the opportunity to participate in any retirement, health, welfare and fringe benefit plans maintained by the Company from time to time on terms generally applicable to senior executives of the Company, subject to eligibility pursuant to the terms of such programs. The Company will reimburse you in an amount equal to $800 per month for the monthly premiums due under the Company benefit plans for yourself and your dependents.

5. Employment at Will. Notwithstanding anything in this letter to the contrary, you will be considered an "employee-at-will," and both you and the Company have the right to terminate the employment relationship at any time and for any reason.

6. Withholding. All payments made to you pursuant to this letter will be subject to applicable withholding taxes, if any, and any amount so withheld shall be deemed to have been paid to you for purposes of amounts due to you under this letter.

7. Section 409A of the Code. This letter is intended to either comply with, or be exempt from, the provisions of Section 409A of the Internal Revenue Code of 1986, as amended, and the interpretative guidance thereunder, including the exceptions for short-term deferrals, separation pay arrangements, reimbursements, and in-kind distributions. This letter shall be construed and interpreted in accordance with such intent.

8. Governing Law. This letter shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this letter shall be governed by, the laws of the State of Louisiana, without giving effect to provisions thereof regarding conflict of laws.

9. Complete Agreement. This letter embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements, or representations by or among the parties, written or oral, which deal with the matters set forth herein.

[Signature page follows.]

Should you have any questions regarding this offer, please contact me.

Sincerely,

WAITR HOLDINGS INC.

/s/ Chris Meaux
Name: Chris Meaux
Title: Chief Executive Officer

[Signature Page to Offer Letter]

The undersigned accepts the above employment offer and agrees that this letter supersedes all prior written or verbal understandings or agreements between the parties regarding the matters described in this letter. By accepting this offer, the undersigned acknowledges that no prior employment obligations or other contractual restrictions or conditions of any nature whatsoever exist which preclude or relate to the undersigned's employment with the Company. It is further understood that this offer and the terms included are confidential and disclosure by you may cause the Company to withdraw this offer.

Accepted by:

/s/ Travis Boudreaux	11/14/2018
Travis Boudreaux	Date

[Signature Page to Offer Letter]

Exhibit 10.12

CONFIDENTIAL

November 15, 2018

Mr. Manuel Rivero
2324 Centennial Loop
Round Rock, TX 78665

Dear Manuel:

On behalf of Waitr Holdings Inc. (the "Company"), I am pleased to offer you ("you" or "Employee") a position with the Company on the terms and conditions set forth below. This letter confirms to you the Company's offer of employment pursuant to previous discussions with you.

The principal terms of our offer are as follows:

1. Start Date and Responsibility. You will start working for the Company on a full-time basis, effective as of November 15, 2018. The Company is offering you the position of Chief Architect of the Company. You will report directly to the Chief Executive Officer of the Company. In your position, you shall have such duties and responsibilities as are commensurate with such position at similarly-situated companies and such additional duties as may be assigned by the Chief Executive Officer of the Company from time to time.

2. Principal Place of Employment. Subject to reasonable travel, you will perform your duties on behalf of the Company at the Company's offices in Lafayette, Louisiana.

3. Compensation.

    a. Base Salary. The Company will pay you a base salary of $150,000 per year ("Base Salary") in accordance with the Company's standard payroll practices as in effect from time to time, subject to applicable withholding taxes and deductions.

    b. Discretionary Annual Bonus. For each completed fiscal year of the Company during the term of your employment, you will be eligible to earn a discretionary annual cash bonus with a target bonus opportunity equal to 60% of your Base Salary, based upon the attainment of performance metrics to be established, and as determined, by the Board of Directors of the Company in its sole discretion.

c. Equity Award. You will be entitled to receive an equity award under the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "Plan") of a stock option to purchase 50,000 shares of common stock of the Company (the "Award"). The Award will vest in three (3) equal installments over a three-year service period following the grant date and will be subject to the terms and conditions set forth in the Plan and the applicable award agreement to be entered into between the Company and you.

d. Car Allowance. You will be entitled to receive a car allowance of $1,000 per month.

4. Employee Benefits. You will be entitled to paid time off on an annual basis in accordance with the Company's policies. Holidays will be observed and paid in accordance with Company policy. You will have the opportunity to participate in any retirement, health, welfare and fringe benefit plans maintained by the Company from time to time on terms generally applicable to senior executives of the Company, subject to eligibility pursuant to the terms of such programs. The Company will reimburse you in an amount equal to $800 per month for the monthly premiums due under the Company benefit plans for yourself and your dependents.

5. Employment at Will. Notwithstanding anything in this letter to the contrary, you will be considered an "employee-at-will," and both you and the Company have the right to terminate the employment relationship at any time and for any reason.

6. Withholding. All payments made to you pursuant to this letter will be subject to applicable withholding taxes, if any, and any amount so withheld shall be deemed to have been paid to you for purposes of amounts due to you under this letter.

7. Section 409A of the Code. This letter is intended to either comply with, or be exempt from, the provisions of Section 409A of the Internal Revenue Code of 1986, as amended, and the interpretative guidance thereunder, including the exceptions for short-term deferrals, separation pay arrangements, reimbursements, and in-kind distributions. This letter shall be construed and interpreted in accordance with such intent.

8. Governing Law. This letter shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this letter shall be governed by, the laws of the State of Louisiana, without giving effect to provisions thereof regarding conflict of laws.

9. Complete Agreement. This letter embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements, or representations by or among the parties, written or oral, which deal with the matters set forth herein.

[Signature page follows.]

Should you have any questions regarding this offer, please contact me.

Sincerely,

WAITR HOLDINGS INC.

/s/ Chris Meaux
Name: Chris Meaux
Title: Chief Executive Officer

[Signature Page to Offer Letter]

The undersigned accepts the above employment offer and agrees that this letter supersedes all prior written or verbal understandings or agreements between the parties regarding the matters described in this letter. By accepting this offer, the undersigned acknowledges that no prior employment obligations or other contractual restrictions or conditions of any nature whatsoever exist which preclude or relate to the undersigned's employment with the Company. It is further understood that this offer and the terms included are confidential and disclosure by you may cause the Company to withdraw this offer.

Accepted by:

/s/ Manuel Rivero	11/14/2018
Manuel Rivero	Date

[Signature Page to Offer Letter]

Exhibit 10.13

CONFIDENTIAL

November 15, 2018

Mr. David Pringle
2181 Arnold Drive
Rocklin, CA 95765

Dear Dave:

On behalf of Waitr Holdings Inc. (the "Company"), I am pleased to offer you ("you" or "Employee") a position with the Company on the terms and conditions set forth below. This letter confirms to you the Company's offer of employment pursuant to previous discussions with you.

The principal terms of our offer are as follows:

1. Start Date and Responsibility. You will start working for the Company on a full-time basis, effective as of November 15, 2018. The Company is offering you the position of Chief Financial Officer of the Company. You will report directly to the Chief Executive Officer of the Company. In your position, you shall have such duties and responsibilities as are commensurate with such position at similarly-situated companies and such additional duties as may be assigned by the Chief Executive Officer of the Company from time to time.

2. Principal Place of Employment. Subject to reasonable travel, you will perform your duties on behalf of the Company at the Company's offices in Lafayette, Louisiana.

3. Compensation.

    a. Base Salary. The Company will pay you a base salary of $310,000 per year ("Base Salary") in accordance with the Company's standard payroll practices as in effect from time to time, subject to applicable withholding taxes and deductions.

    b. Discretionary Annual Bonus. For each completed fiscal year of the Company during the term of your employment, you will be eligible to earn a discretionary annual cash bonus with a target bonus opportunity equal to 50% of your Base Salary, based upon the attainment of performance metrics to be established, and as determined, by the Board of Directors of the Company in its sole discretion.

c. Equity Award. You will be entitled to receive an equity award under the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "Plan") with a grant date value equal to approximately $840,400, based on the closing price per share of common stock of the Company ("Common Stock") on the grant date (the "Award"). Fifty percent (50%) of the Award will be in the form of a stock option to purchase shares of Common Stock and fifty percent (50%) of the Award will be in the form of restricted shares of Common Stock. The Award will be subject to the terms and conditions set forth in the Plan and the applicable award agreements to be entered into between the Company and you.

d. Car Allowance. You will be entitled to receive a car allowance of $1,000 per month.

4. Employee Benefits. You will be entitled to paid time off on an annual basis in accordance with the Company's policies. Holidays will be observed and paid in accordance with Company policy. You will have the opportunity to participate in any retirement, health, welfare and fringe benefit plans maintained by the Company from time to time on terms generally applicable to senior executives of the Company, subject to eligibility pursuant to the terms of such programs. The Company will reimburse you in an amount equal to $800 per month for the monthly premiums due under the Company benefit plans for yourself and your dependents.

5. Employment at Will. Notwithstanding anything in this letter to the contrary, you will be considered an "employee-at-will," and both you and the Company have the right to terminate the employment relationship at any time and for any reason.

6. Withholding. All payments made to you pursuant to this letter will be subject to applicable withholding taxes, if any, and any amount so withheld shall be deemed to have been paid to you for purposes of amounts due to you under this letter.

7. Section 409A of the Code. This letter is intended to either comply with, or be exempt from, the provisions of Section 409A of the Internal Revenue Code of 1986, as amended, and the interpretative guidance thereunder, including the exceptions for short-term deferrals, separation pay arrangements, reimbursements, and in-kind distributions. This letter shall be construed and interpreted in accordance with such intent.

8. Governing Law. This letter shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this letter shall be governed by, the laws of the State of Louisiana, without giving effect to provisions thereof regarding conflict of laws.

9. Complete Agreement. This letter embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements, or representations by or among the parties, written or oral, which deal with the matters set forth herein.

[Signature page follows.]

Should you have any questions regarding this offer, please contact me.

Sincerely,

WAITR HOLDINGS INC.

/s/ Chris Meaux
Name: Chris Meaux
Title: Chief Executive Officer

[Signature Page to Offer Letter]

The undersigned accepts the above employment offer and agrees that this letter supersedes all prior written or verbal understandings or agreements between the parties regarding the matters described in this letter. By accepting this offer, the undersigned acknowledges that no prior employment obligations or other contractual restrictions or conditions of any nature whatsoever exist which preclude or relate to the undersigned's employment with the Company. It is further understood that this offer and the terms included are confidential and disclosure by you may cause the Company to withdraw this offer.

Accepted by:

/s/ David Pringle	11/14/18
David Pringle	Date

[Signature Page to Offer Letter]

Exhibit 10.14

CONFIDENTIAL

November 15, 2018

Mr. Joseph Stough
9 Par Drive
Lake Charles, LA 70605

Dear Joe:

On behalf of Waitr Holdings Inc. (the "Company"), I am pleased to offer you ("you" or "Employee") a position with the Company on the terms and conditions set forth below. This letter confirms to you the Company's offer of employment pursuant to previous discussions with you.

The principal terms of our offer are as follows:

1. Start Date and Responsibility. You will start working for the Company on a full-time basis, effective as of November 15, 2018. The Company is offering you the positions of President and Chief Operating Officer of the Company. You will report directly to the Chief Executive Officer of the Company. In your position, you shall have such duties and responsibilities as are commensurate with such position at similarly-situated companies and such additional duties as may be assigned by the Chief Executive Officer of the Company from time to time.

2. Principal Place of Employment. Subject to reasonable travel, you will perform your duties on behalf of the Company at the Company's offices in Lafayette, Louisiana.

3. Compensation.

    a. Base Salary. The Company will pay you a base salary of $325,000 per year ("Base Salary") in accordance with the Company's standard payroll practices as in effect from time to time, subject to applicable withholding taxes and deductions.

    b. Discretionary Annual Bonus. For each completed fiscal year of the Company during the term of your employment, you will be eligible to earn a discretionary annual cash bonus with a target bonus opportunity equal to 50% of your Base Salary, based upon the attainment of performance metrics to be established, and as determined, by the Board of Directors of the Company in its sole discretion.

c. Equity Award. You will be entitled to receive an equity award under the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "Plan") with a grant date value equal to approximately $860,000, based on the closing price per share of common stock of the Company ("Common Stock") on the grant date (the "Award"). Fifty percent (50%) of the Award will be in the form of a stock option to purchase shares of Common Stock and fifty percent (50%) of the Award will be in the form of restricted shares of Common Stock. The Award will be subject to the terms and conditions set forth in the Plan and the applicable award agreements to be entered into between the Company and you.

d. Car Allowance. You will be entitled to receive a car allowance of $1,000 per month.

4. Employee Benefits. You will be entitled to paid time off on an annual basis in accordance with the Company's policies. Holidays will be observed and paid in accordance with Company policy. You will have the opportunity to participate in any retirement, health, welfare and fringe benefit plans maintained by the Company from time to time on terms generally applicable to senior executives of the Company, subject to eligibility pursuant to the terms of such programs. The Company will reimburse you in an amount equal to $800 per month for the monthly premiums due under the Company benefit plans for yourself and your dependents.

5. Employment at Will. Notwithstanding anything in this letter to the contrary, you will be considered an "employee-at-will," and both you and the Company have the right to terminate the employment relationship at any time and for any reason.

6. Withholding. All payments made to you pursuant to this letter will be subject to applicable withholding taxes, if any, and any amount so withheld shall be deemed to have been paid to you for purposes of amounts due to you under this letter.

7. Section 409A of the Code. This letter is intended to either comply with, or be exempt from, the provisions of Section 409A of the Internal Revenue Code of 1986, as amended, and the interpretative guidance thereunder, including the exceptions for short-term deferrals, separation pay arrangements, reimbursements, and in-kind distributions. This letter shall be construed and interpreted in accordance with such intent.

8. Governing Law. This letter shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this letter shall be governed by, the laws of the State of Louisiana, without giving effect to provisions thereof regarding conflict of laws.

9. Complete Agreement. This letter embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements, or representations by or among the parties, written or oral, which deal with the matters set forth herein.

[Signature page follows.]

Should you have any questions regarding this offer, please contact me.

Sincerely,

WAITR HOLDINGS INC.

/s/ Chris Meaux
Name: Chris Meaux
Title: Chief Executive Officer

[Signature Page to Offer Letter]

The undersigned accepts the above employment offer and agrees that this letter supersedes all prior written or verbal understandings or agreements between the parties regarding the matters described in this letter. By accepting this offer, the undersigned acknowledges that no prior employment obligations or other contractual restrictions or conditions of any nature whatsoever exist which preclude or relate to the undersigned's employment with the Company. It is further understood that this offer and the terms included are confidential and disclosure by you may cause the Company to withdraw this offer.

Accepted by:

/s/ Joseph Stough	November 14, 2018
Joseph Stough	Date

[Signature Page to Offer Letter]

CONFIDENTIAL

November 15, 2018

Mr. Sonny Mayugba
974 Riverfront Street
West Sacramento, CA 95691

Dear Sonny:

On behalf of Waitr Holdings Inc. (the "Company"), I am pleased to offer you ("you" or "Employee") a position with the Company on the terms and conditions set forth below. This letter confirms to you the Company's offer of employment pursuant to previous discussions with you.

The principal terms of our offer are as follows:

1. Start Date and Responsibility. You will start working for the Company on a full-time basis, effective as of November 15, 2018. The Company is offering you the position of Chief Marketing Officer of the Company. You will report directly to the Chief Executive Officer of the Company. In your position, you shall have such duties and responsibilities as are commensurate with such position at similarly-situated companies and such additional duties as may be assigned by the Chief Executive Officer of the Company from time to time.

2. Principal Place of Employment. Subject to reasonable travel, you will perform your duties on behalf of the Company at the Company's offices in Lafayette, Louisiana.

3. Compensation.

   a. Base Salary. The Company will pay you a base salary of $261,000 per year ("Base Salary") in accordance with the Company's standard payroll practices as in effect from time to time, subject to applicable withholding taxes and deductions.

   b. Discretionary Annual Bonus. For each completed fiscal year of the Company during the term of your employment, you will be eligible to earn a discretionary annual cash bonus with a target bonus opportunity equal to 50% of your Base Salary, based upon the attainment of performance metrics to be established, and as determined, by the Board of Directors of the Company in its sole discretion.

c. Equity Award. You will be entitled to receive an equity award under the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "Plan") with a grant date value equal to approximately $450,000, based on the closing price per share of common stock of the Company ("Common Stock") on the grant date (the "Award"). Fifty percent (50%) of the Award will be in the form of a stock option to purchase shares of Common Stock and fifty percent (50%) of the Award will be in the form of restricted shares of Common Stock. The Award will be subject to the terms and conditions set forth in the Plan and the applicable award agreements to be entered into between the Company and you.

d. Car Allowance. You will be entitled to receive a car allowance of $1,000 per month.

4. Employee Benefits. You will be entitled to paid time off on an annual basis in accordance with the Company's policies. Holidays will be observed and paid in accordance with Company policy. You will have the opportunity to participate in any retirement, health, welfare and fringe benefit plans maintained by the Company from time to time on terms generally applicable to senior executives of the Company, subject to eligibility pursuant to the terms of such programs. The Company will reimburse you in an amount equal to $800 per month for the monthly premiums due under the Company benefit plans for yourself and your dependents.

5. Employment at Will. Notwithstanding anything in this letter to the contrary, you will be considered an "employee-at-will," and both you and the Company have the right to terminate the employment relationship at any time and for any reason.

6. Withholding. All payments made to you pursuant to this letter will be subject to applicable withholding taxes, if any, and any amount so withheld shall be deemed to have been paid to you for purposes of amounts due to you under this letter.

7. Section 409A of the Code. This letter is intended to either comply with, or be exempt from, the provisions of Section 409A of the Internal Revenue Code of 1986, as amended, and the interpretative guidance thereunder, including the exceptions for short-term deferrals, separation pay arrangements, reimbursements, and in-kind distributions. This letter shall be construed and interpreted in accordance with such intent.

8. Governing Law. This letter shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this letter shall be governed by, the laws of the State of Louisiana, without giving effect to provisions thereof regarding conflict of laws.

9. Complete Agreement. This letter embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements, or representations by or among the parties, written or oral, which deal with the matters set forth herein.

[Signature page follows.]

Should you have any questions regarding this offer, please contact me.

Sincerely,

WAITR HOLDINGS INC.

/s/ Chris Meaux
Name: Chris Meaux
Title: Chief Executive Officer

[Signature Page to Offer Letter]

The undersigned accepts the above employment offer and agrees that this letter supersedes all prior written or verbal understandings or agreements between the parties regarding the matters described in this letter. By accepting this offer, the undersigned acknowledges that no prior employment obligations or other contractual restrictions or conditions of any nature whatsoever exist which preclude or relate to the undersigned's employment with the Company. It is further understood that this offer and the terms included are confidential and disclosure by you may cause the Company to withdraw this offer.

Accepted by:

/s/ Sonny Mayugba	November 14, 2018
Sonny Mayugba	Date

[Signature Page to Offer Letter]

Exhibit 10.16

CONFIDENTIAL

November 15, 2018

Mr. Addison Killebrew
909 Omega Drive
Lafayette, LA 70506

Dear Addison:

On behalf of Waitr Holdings Inc. (the "Company"), I am pleased to offer you ("you" or "Employee") a position with the Company on the terms and conditions set forth below. This letter confirms to you the Company's offer of employment pursuant to previous discussions with you.

The principal terms of our offer are as follows:

1. Start Date and Responsibility. You will start working for the Company on a full-time basis, effective as of November 15, 2018. The Company is offering you the position of Chief Innovation Officer of the Company. You will report directly to the Chief Executive Officer of the Company. In your position, you shall have such duties and responsibilities as are commensurate with such position at similarly-situated companies and such additional duties as may be assigned by the Chief Executive Officer of the Company from time to time.

2. Principal Place of Employment. Subject to reasonable travel, you will perform your duties on behalf of the Company at the Company's offices in Lafayette, Louisiana.

3. Compensation.

    a. Base Salary. The Company will pay you a base salary of $205,000 per year ("Base Salary") in accordance with the Company's standard payroll practices as in effect from time to time, subject to applicable withholding taxes and deductions.

    b. Discretionary Annual Bonus. For each completed fiscal year of the Company during the term of your employment, you will be eligible to earn a discretionary annual cash bonus with a target bonus opportunity equal to 45% of your Base Salary, based upon the attainment of performance metrics to be established, and as determined, by the Board of Directors of the Company in its sole discretion.

c. Equity Award. You will be entitled to receive an equity award under the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "Plan") with a grant date value equal to approximately $400,000, based on the closing price per share of common stock of the Company ("Common Stock") on the grant date (the "Award"). Fifty percent (50%) of the Award will be in the form of a stock option to purchase shares of Common Stock and fifty percent (50%) of the Award will be in the form of restricted shares of Common Stock. The Award will be subject to the terms and conditions set forth in the Plan and the applicable award agreements to be entered into between the Company and you.

d. Car Allowance. You will be entitled to receive a car allowance of $1,000 per month.

4. Employee Benefits. You will be entitled to paid time off on an annual basis in accordance with the Company's policies. Holidays will be observed and paid in accordance with Company policy. You will have the opportunity to participate in any retirement, health, welfare and fringe benefit plans maintained by the Company from time to time on terms generally applicable to senior executives of the Company, subject to eligibility pursuant to the terms of such programs. The Company will reimburse you in an amount equal to $800 per month for the monthly premiums due under the Company benefit plans for yourself and your dependents.

5. Employment at Will. Notwithstanding anything in this letter to the contrary, you will be considered an "employee-at-will," and both you and the Company have the right to terminate the employment relationship at any time and for any reason.

6. Withholding. All payments made to you pursuant to this letter will be subject to applicable withholding taxes, if any, and any amount so withheld shall be deemed to have been paid to you for purposes of amounts due to you under this letter.

7. Section 409A of the Code. This letter is intended to either comply with, or be exempt from, the provisions of Section 409A of the Internal Revenue Code of 1986, as amended, and the interpretative guidance thereunder, including the exceptions for short-term deferrals, separation pay arrangements, reimbursements, and in-kind distributions. This letter shall be construed and interpreted in accordance with such intent.

8. Governing Law. This letter shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this letter shall be governed by, the laws of the State of Louisiana, without giving effect to provisions thereof regarding conflict of laws.

9. Complete Agreement. This letter embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements, or representations by or among the parties, written or oral, which deal with the matters set forth herein.

[Signature page follows.]

Should you have any questions regarding this offer, please contact me. I look forward to you joining the team.

Sincerely,

WAITR HOLDINGS INC.

/s/ Chris Meaux
Name: Chris Meaux
Title: Chief Executive Officer

[Signature Page to Offer Letter]

The undersigned accepts the above employment offer and agrees that this letter supersedes all prior written or verbal understandings or agreements between the parties regarding the matters described in this letter. By accepting this offer, the undersigned acknowledges that no prior employment obligations or other contractual restrictions or conditions of any nature whatsoever exist which preclude or relate to the undersigned's employment with the Company. It is further understood that this offer and the terms included are confidential and disclosure by you may cause the Company to withdraw this offer.

Accepted by:

/s/ Addison Killebrew	November 13, 2018
Addison Killebrew	Date

[Signature Page to Offer Letter]

Exhibit 10.17

EXECUTION VERSION

CONSULTING AGREEMENT

This **CONSULTING AGREEMENT** is entered into as of this 15th day of November, 2018 (this "Consulting Agreement"), by and between Waitr Holdings Inc. (the "Company"), and Steven L. Scheinthal ("Consultant"). The Company and Consultant may also be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Consultant served as the Vice President, General Counsel and Secretary of the Company since its inception through its business combination with Waitr Incorporated (the "Business Combination"), and Consultant has significant experience serving as vice president, general counsel and secretary of a public company in the restaurant, hospitality and entertainment industries; and

WHEREAS, the Company wishes to retain Consultant to provide it with consulting services following the Business Combination, and Consultant wishes to be engaged to provide consulting services to the Company, on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Services. During the Term (as defined below), Consultant agrees, at the direction of the Company's Board of Directors (the "Board") or chief executive officer ("CEO"), to provide his expertise, advice and assistance on such projects as reasonably requested, not to exceed 15 hours per month, subject to reasonable notice by the Company to Consultant of the request to provide such services (the "Services"). Consultant will perform the Services under the general supervision of the Board and the CEO, but Consultant will determine, in Consultant's sole discretion, the manner and means by which and where the Services are to be performed. The Company has no right or authority to control the manner or means by which or where the Services are performed.

2. Independent Contractor Status. Consultant agrees that Consultant is an independent contractor and that Consultant is not entitled to and shall not claim any of the rights, privileges or benefits of an employee of the Company. Nothing herein shall be construed to create a joint venture or partnership between the Parties hereto or an employee/employer relationship. Consultant understands that Consultant shall not receive any of the rights, privileges and benefits that the Company extends to its employees, including, but not limited to, pension, retirement savings or welfare benefits, vacation, termination or severance pay or other perquisites by virtue of this Consulting Agreement or by virtue of Consultant's provision of Services to the Company. The Company shall issue an IRS Form 1099 to Consultant in connection with the Consulting Fees in accordance with applicable law. Consultant is responsible for any and all employment related federal, state and local taxes, unemployment compensation coverage, workers' compensation insurance and social security payments relating to the Services. Neither Party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

3. Compensation. In consideration of the Services to be provided by Consultant hereunder, Consultant shall be issued, on the date hereof, an award of 150,000 restricted shares of common stock (the "Award") under the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "Plan"). The Award will vest in full on the first anniversary of the date of grant, unless the Term of this Consulting Agreement is terminated prior the first anniversary of the date hereof in accordance with Section 4 hereof other than as a result of Consultant's death or disability (in which case the Award shall be immediately vested in full). The Award shall be subject to the terms and condition set forth in the Plan and a written award agreement.

4. Term. This Consulting Agreement shall be effective as of the date hereof and continue in full force and effect until the first anniversary of the date hereof, unless otherwise terminated pursuant to this Section 4 (the "Term"). The Term may be terminated (i) by Consultant for any reason or no reason with no less than thirty (30) days' advance written notice to the Company; (ii) by the Company for Cause upon written notice to Consultant of the event constituting Cause; or (iii) immediately upon the death or disability of Consultant, however, in such event, the Award shall immediately vest in full. Upon termination of the Term, the Company's only obligations shall be to reimburse any unreimbursed expenses otherwise reimbursable to Consultant under this Consulting Agreement. For purposes of this Section 4, "Cause" means Consultant: (i) is convicted of a felony or a crime involving moral turpitude, (ii) willfully commits fraud, theft, embezzlement or other malfeasance against the business of the Company resulting in material economic or financial injury to the Company or (ii) materially fails to perform his Services hereunder after written notice has been delivered to the Consultant by the Company, which notice specifically identifies the manner in which the Consultant has failed to perform, and the Consultant's failure to perform his Services hereunder is not cured within thirty (30) days after such notice of failure has been delivered to the Consultant.

5. Expenses. Consultant is authorized to incur reasonable expenses in carrying out Consultant's duties for the Company hereunder and shall be promptly reimbursed for all such reasonable business and out-of-town travel expenses directly attributable to the performance of the Services under this Consulting Agreement, subject to the Company's expense reimbursement policies and any pre-approval policies in effect from time to time. Consultant shall provide the Company with receipts for all expenses for which Consultant expects to be reimbursed.

6. Confidentiality.

6.1. Consultant covenants and agrees that while Consultant is engaged by the Company and following termination of that engagement for any reason, all confidential or proprietary information about the Company and its subsidiaries and customers ("Confidential Information") obtained by Consultant during the course of providing Services hereunder shall be treated by Consultant as confidential, proprietary, and in the nature of trade secrets, and Consultant agrees not to: (i) disclose any Confidential Information to any third party, including employees or consultants of the Company who do not have a legitimate business need to know, without the specific consent of the Company, except as required by law or by existing contracts to which the Company is a party; or (ii) use any Confidential Information for Consultant's own benefit or for the benefit of any other person or in any way that would be detrimental to the Company's business.

6.2. The absence of any marking or statement that particular information is Confidential Information shall not affect its status as Confidential Information.

6.3. Confidential Information shall not include information (a) that is or becomes generally available to the public other than through the breach by Consultant of this Consulting Agreement, (b) that is provided to Consultant by a third party that had no confidentiality obligations with respect to such information or (c) that is independently developed by Consultant without reference to confidential or proprietary information of the Company.

6.4. Notwithstanding anything to the contrary in this Section 6, nothing in this Consulting Agreement prohibits Consultant from reporting possible violations of federal law or regulation to any governmental agency or entity, including but not limited to the Department of Justice and the Securities and Exchange Commission and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. Consultant does not need the prior authorization of the Company to make any such reports or disclosures and is not required to notify the Company that Consultant has made such reports or disclosures.

7. Intellectual Property. Consultant agrees that all inventions, technology, designs, innovations and improvements (whether or not patentable and whether or not copyrightable) which are made, conceived, reduced to practice, created, written, designed or developed by Consultant, solely or jointly with others, (i) that directly and exclusively relate to the Company's proprietary mobile application or any of the technology that is used, developed or obtained by the Company or any of its affiliates or subsidiaries in connection with its business or (ii) if resulting or directly derived from Confidential Information (collectively under clauses (i) and (ii), "Inventions"), shall be the sole property of the Company. Consultant shall and hereby does assign to the Company all Inventions and any and all related patents, copyrights, trademarks, trade names, and other industrial and intellectual property rights and applications therefor, in the United States and elsewhere. Consultant agrees to cooperate with and assist Company to apply for, and to execute any applications and/or assignments reasonably necessary to obtain, any patent, copyright, trademark or other statutory protection for Inventions in Company's name as Company deems appropriate and to otherwise treat all Inventions as Proprietary Information.

8. Pre-Existing Materials. Subject to Section 7 of this Consulting Agreement, Consultant will provide the Company with prior written notice if, in the course of performing the Services, Consultant incorporates into any Invention or utilizes in the performance of the Services any pre-existing invention, discovery, idea, original works of authorship, development, improvements, trade secret, concept, or other proprietary information or intellectual property right owned by Consultant or his affiliates or in which Consultant has an interest, prior to, or separate from, performing Services under this Agreement ("Prior Inventions"). Without limiting the generality of the foregoing, (i) Consultant will provide the Company with prior written notice and (ii) the Company is hereby granted a nonexclusive, royalty-free, perpetual, irrevocable, transferable, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Prior Inventions, without restriction, including, without limitation, as part of or in connection with such Invention, and to practice any method related thereto. Consultant will not incorporate any invention, improvement, development, concept, discovery, idea, original works of authorship, development, improvement, trade secret, concept, or other proprietary information or intellectual property right owned by any third party into any Invention without Company's prior written permission.

9. Return of Property. Upon the termination of this Consulting Agreement for any reason, or at any time when so requested by the Company, Consultant agrees to promptly return and/or permanently delete all documents and data belonging to the Company or related to the Company, its clients, customers or its business in Consultant's possession or control and any other materials containing Confidential Information, including all hard copies as well as stored data on any electronic device, except to the extent Consultant is at such time serving as a director of the Company and such documents or data relate to such service.

10. Damages and Injunctive Relief. Consultant acknowledges and agrees that a violation or even a threatened violation of Sections 6, 7, 8 or 9 of this Consulting Agreement by Consultant is likely to result in irreparable harm to the Company and monetary damages alone would not completely compensate the Company for the harm. Accordingly, the Company may obtain an injunction prohibiting Consultant from violating Sections 6, 7, 8 or 9 of the Consulting Agreement, an order requiring Consultant to render specific performance of Sections 6, 7, 8 or 9 of the Consulting Agreement, and/or other appropriate equitable remedies, without the need to post bond, in addition to and not in limitation of any other rights, remedies, or damages available to the Company at law or in equity.

11. Representations, Warranties and Covenants. Consultant shall comply with all local, state and federal laws that are applicable to Consultant's obligations under this Consulting Agreement or any related activities. Consultant shall perform under this Consulting Agreement in a professional, ethical and workmanlike manner and in accordance with the highest professional standards in the industry. Consultant represents and warrants to the Company that Consultant has the requisite training, skill set and experience level necessary to perform Consultant's obligations under this Consulting Agreement. Consultant further represents and warrants that Consultant is able to provide the Services to the Company and that Consultant's ability to work for the Company is not limited or restricted by any agreements or understandings between Consultant and other persons or companies.

12. No Assignment. Consultant may not assign, delegate, subcontract or license, in whole or in part, this Consulting Agreement, including without limitation, any of the rights, duties and obligations without the prior written consent of the Company, which consent may be withheld in the Company's sole discretion. Any attempted assignment, delegation, subcontract or licensing of such rights, duties or obligations without the Company's prior written consent shall be void and of no effect. The provisions of this Consulting Agreement are binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

13. Governing Law; Waiver of Jury Trial; Legal Costs. The Parties agree that this Consulting Agreement shall be governed by the laws of the State of Delaware, without regard to any conflicts of law principles. Any dispute arising under or relating to the Consulting Agreement shall be brought in a state or federal court sitting in the State of Delaware, provided that any party may seek injunctive relief in any court of competent jurisdiction. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding, or counterclaim arising out of or relating to this Consulting Agreement. If either party must pursue legal action to enforce or enjoin any action on the other party's part in contravention of any provision of this Consulting Agreement, the prevailing party (as determined by the Court) shall be entitled to recover its costs, including its reasonable attorneys' fees in connection with any action in which it successfully obtains an injunction and/or damages.

14. Waiver. No failure to act by the Company shall waive any right contained in this Consulting Agreement. Any waiver by the Company must be in writing and signed by an officer of the Company to be effective.

15. No Third Party Beneficiaries. This Consulting Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever.

16. Counterparts. This Consulting Agreement may be executed in multiple counterparts and by facsimile signature, each of which shall be deemed an original and all of which together shall constitute one instrument.

[Signature page follows.]

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

CONSULTANT

/s/ Steven L. Scheinthal
Steven L. Scheinthal

WAITR HOLDINGS INC.

By: /s/ Chris Meaux
Name: Chris Meaux
Title: Chief Executive Officer

[Signature page to Consulting Agreement]

Exhibit 10.18

EXECUTION VERSION

CONSULTING AGREEMENT

This **CONSULTING AGREEMENT** is entered into as of this 15th day of November, 2018 (this "Consulting Agreement"), by and between Waitr Holdings Inc. (the "Company"), and Richard H. Liem ("Consultant"). The Company and Consultant may also be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Consultant served as the Vice President, General Counsel and Secretary of the Company since its inception through its business combination with Waitr Incorporated (the "Business Combination"), and Consultant has significant experience serving as vice president, general counsel and secretary of a public company in the restaurant, hospitality and entertainment industries; and

WHEREAS, the Company wishes to retain Consultant to provide it with consulting services following the Business Combination, and Consultant wishes to be engaged to provide consulting services to the Company, on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Services. During the Term (as defined below), Consultant agrees, at the direction of the Company's Board of Directors (the "Board") or chief executive officer ("CEO"), to provide his expertise, advice and assistance on such projects as reasonably requested, not to exceed 15 hours per month, subject to reasonable notice by the Company to Consultant of the request to provide such services (the "Services"). Consultant will perform the Services under the general supervision of the Board and the CEO, but Consultant will determine, in Consultant's sole discretion, the manner and means by which and where the Services are to be performed. The Company has no right or authority to control the manner or means by which or where the Services are performed.

2. Independent Contractor Status. Consultant agrees that Consultant is an independent contractor and that Consultant is not entitled to and shall not claim any of the rights, privileges or benefits of an employee of the Company. Nothing herein shall be construed to create a joint venture or partnership between the Parties hereto or an employee/employer relationship. Consultant understands that Consultant shall not receive any of the rights, privileges and benefits that the Company extends to its employees, including, but not limited to, pension, retirement savings or welfare benefits, vacation, termination or severance pay or other perquisites by virtue of this Consulting Agreement or by virtue of Consultant's provision of Services to the Company. The Company shall issue an IRS Form 1099 to Consultant in connection with the Consulting Fees in accordance with applicable law. Consultant is responsible for any and all employment related federal, state and local taxes, unemployment compensation coverage, workers' compensation insurance and social security payments relating to the Services. Neither Party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

3. Compensation. In consideration of the Services to be provided by Consultant hereunder, Consultant shall be issued, on the date hereof, an award of 150,000 restricted shares of common stock (the "Award") under the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "Plan"). The Award will vest in full on the first anniversary of the date of grant, unless the Term of this Consulting Agreement is terminated prior the first anniversary of the date hereof in accordance with Section 4 hereof other than as a result of Consultant's death or disability (in which case the Award shall be immediately vested in full). The Award shall be subject to the terms and condition set forth in the Plan and a written award agreement.

4. Term. This Consulting Agreement shall be effective as of the date hereof and continue in full force and effect until the first anniversary of the date hereof, unless otherwise terminated pursuant to this Section 4 (the "Term"). The Term may be terminated (i) by Consultant for any reason or no reason with no less than thirty (30) days' advance written notice to the Company; (ii) by the Company for Cause upon written notice to Consultant of the event constituting Cause; or (iii) immediately upon the death or disability of Consultant, however, in such event, the Award shall immediately vest in full. Upon termination of the Term, the Company's only obligations shall be to reimburse any unreimbursed expenses otherwise reimbursable to Consultant under this Consulting Agreement. For purposes of this Section 4, "Cause" means Consultant: (i) is convicted of a felony or a crime involving moral turpitude, (ii) willfully commits fraud, theft, embezzlement or other malfeasance against the business of the Company resulting in material economic or financial injury to the Company or (ii) materially fails to perform his Services hereunder after written notice has been delivered to the Consultant by the Company, which notice specifically identifies the manner in which the Consultant has failed to perform, and the Consultant's failure to perform his Services hereunder is not cured within thirty (30) days after such notice of failure has been delivered to the Consultant.

5. Expenses. Consultant is authorized to incur reasonable expenses in carrying out Consultant's duties for the Company hereunder and shall be promptly reimbursed for all such reasonable business and out-of-town travel expenses directly attributable to the performance of the Services under this Consulting Agreement, subject to the Company's expense reimbursement policies and any pre-approval policies in effect from time to time. Consultant shall provide the Company with receipts for all expenses for which Consultant expects to be reimbursed.

6. Confidentiality.

6.1. Consultant covenants and agrees that while Consultant is engaged by the Company and following termination of that engagement for any reason, all confidential or proprietary information about the Company and its subsidiaries and customers ("Confidential Information") obtained by Consultant during the course of providing Services hereunder shall be treated by Consultant as confidential, proprietary, and in the nature of trade secrets, and Consultant agrees not to: (i) disclose any Confidential Information to any third party, including employees or consultants of the Company who do not have a legitimate business need to know, without the specific consent of the Company, except as required by law or by existing contracts to which the Company is a party; or (ii) use any Confidential Information for Consultant's own benefit or for the benefit of any other person or in any way that would be detrimental to the Company's business.

6.2. The absence of any marking or statement that particular information is Confidential Information shall not affect its status as Confidential Information.

6.3. Confidential Information shall not include information (a) that is or becomes generally available to the public other than through the breach by Consultant of this Consulting Agreement, (b) that is provided to Consultant by a third party that had no confidentiality obligations with respect to such information or (c) that is independently developed by Consultant without reference to confidential or proprietary information of the Company.

6.4. Notwithstanding anything to the contrary in this Section 6, nothing in this Consulting Agreement prohibits Consultant from reporting possible violations of federal law or regulation to any governmental agency or entity, including but not limited to the Department of Justice and the Securities and Exchange Commission and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. Consultant does not need the prior authorization of the Company to make any such reports or disclosures and is not required to notify the Company that Consultant has made such reports or disclosures.

7. Intellectual Property. Consultant agrees that all inventions, technology, designs, innovations and improvements (whether or not patentable and whether or not copyrightable) which are made, conceived, reduced to practice, created, written, designed or developed by Consultant, solely or jointly with others, (i) that directly and exclusively relate to the Company's proprietary mobile application or any of the technology that is used, developed or obtained by the Company or any of its affiliates or subsidiaries in connection with its business or (ii) if resulting or directly derived from Confidential Information (collectively under clauses (i) and (ii), "Inventions"), shall be the sole property of the Company. Consultant shall and hereby does assign to the Company all Inventions and any and all related patents, copyrights, trademarks, trade names, and other industrial and intellectual property rights and applications therefor, in the United States and elsewhere. Consultant agrees to cooperate with and assist Company to apply for, and to execute any applications and/or assignments reasonably necessary to obtain, any patent, copyright, trademark or other statutory protection for Inventions in Company's name as Company deems appropriate and to otherwise treat all Inventions as Proprietary Information.

8. Pre-Existing Materials. Subject to Section 7 of this Consulting Agreement, Consultant will provide the Company with prior written notice if, in the course of performing the Services, Consultant incorporates into any Invention or utilizes in the performance of the Services any pre-existing invention, discovery, idea, original works of authorship, development, improvements, trade secret, concept, or other proprietary information or intellectual property right owned by Consultant or his affiliates or in which Consultant has an interest, prior to, or separate from, performing Services under this Agreement ("Prior Inventions"). Without limiting the generality of the foregoing, (i) Consultant will provide the Company with prior written notice and (ii) the Company is hereby granted a nonexclusive, royalty-free, perpetual, irrevocable, transferable, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Prior Inventions, without restriction, including, without limitation, as part of or in connection with such Invention, and to practice any method related thereto. Consultant will not incorporate any invention, improvement, development, concept, discovery, idea, original works of authorship, development, improvement, trade secret, concept, or other proprietary information or intellectual property right owned by any third party into any Invention without Company's prior written permission.

9. Return of Property. Upon the termination of this Consulting Agreement for any reason, or at any time when so requested by the Company, Consultant agrees to promptly return and/or permanently delete all documents and data belonging to the Company or related to the Company, its clients, customers or its business in Consultant's possession or control and any other materials containing Confidential Information, including all hard copies as well as stored data on any electronic device, except to the extent Consultant is at such time serving as a director of the Company and such documents or data relate to such service.

10. Damages and Injunctive Relief. Consultant acknowledges and agrees that a violation or even a threatened violation of Sections 6, 7, 8 or 9 of this Consulting Agreement by Consultant is likely to result in irreparable harm to the Company and monetary damages alone would not completely compensate the Company for the harm. Accordingly, the Company may obtain an injunction prohibiting Consultant from violating Sections 6, 7, 8 or 9 of the Consulting Agreement, an order requiring Consultant to render specific performance of Sections 6, 7, 8 or 9 of the Consulting Agreement, and/or other appropriate equitable remedies, without the need to post bond, in addition to and not in limitation of any other rights, remedies, or damages available to the Company at law or in equity.

11. Representations, Warranties and Covenants. Consultant shall comply with all local, state and federal laws that are applicable to Consultant's obligations under this Consulting Agreement or any related activities. Consultant shall perform under this Consulting Agreement in a professional, ethical and workmanlike manner and in accordance with the highest professional standards in the industry. Consultant represents and warrants to the Company that Consultant has the requisite training, skill set and experience level necessary to perform Consultant's obligations under this Consulting Agreement. Consultant further represents and warrants that Consultant is able to provide the Services to the Company and that Consultant's ability to work for the Company is not limited or restricted by any agreements or understandings between Consultant and other persons or companies.

12. No Assignment. Consultant may not assign, delegate, subcontract or license, in whole or in part, this Consulting Agreement, including without limitation, any of the rights, duties and obligations without the prior written consent of the Company, which consent may be withheld in the Company's sole discretion. Any attempted assignment, delegation, subcontract or licensing of such rights, duties or obligations without the Company's prior written consent shall be void and of no effect. The provisions of this Consulting Agreement are binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

13. Governing Law; Waiver of Jury Trial; Legal Costs. The Parties agree that this Consulting Agreement shall be governed by the laws of the State of Delaware, without regard to any conflicts of law principles. Any dispute arising under or relating to the Consulting Agreement shall be brought in a state or federal court sitting in the State of Delaware, provided that any party may seek injunctive relief in any court of competent jurisdiction. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding, or counterclaim arising out of or relating to this Consulting Agreement. If either party must pursue legal action to enforce or enjoin any action on the other party's part in contravention of any provision of this Consulting Agreement, the prevailing party (as determined by the Court) shall be entitled to recover its costs, including its reasonable attorneys' fees in connection with any action in which it successfully obtains an injunction and/or damages.

14. Waiver. No failure to act by the Company shall waive any right contained in this Consulting Agreement. Any waiver by the Company must be in writing and signed by an officer of the Company to be effective.

15. No Third Party Beneficiaries. This Consulting Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever.

16. Counterparts. This Consulting Agreement may be executed in multiple counterparts and by facsimile signature, each of which shall be deemed an original and all of which together shall constitute one instrument.

[Signature page follows.]

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

CONSULTANT

/s/ Richard H. Liem
Richard H. Liem

WAITR HOLDINGS INC.

By: /s/ Chris Meaux
Name: Chris Meaux
Title: Chief Executive Officer

[Signature page to Consulting Agreement]

Exhibit 10.19

FORM OF STOCKHOLDER LOCKUP AGREEMENT

This Stockholder Lockup Agreement (this "**Agreement**") is made and entered into as of November 15, 2018, by and between Waitr Holdings Inc., a Delaware corporation f/k/a Landcadia Holdings, Inc. ("Landcadia"), and the Person set forth on the signature pages and Exhibit A hereto ("Stockholder"). Each capitalized term used, but not otherwise defined, herein has the respective meaning ascribed to such term in the Agreement and Plan of Merger (the "**Merger Agreement**"), dated as of May 16, 2018, by and among Landcadia, Waitr Inc. f/k/a Landcadia Merger Sub, Inc. and Waitr Incorporated.

WHEREAS, Landcadia has agreed to issue and deliver to the Waitr Stockholders, Waitr Warrant Holders and certain In-the-Money-Vested Option Holders, among other things, an aggregate of Twenty-Two Million Eight Hundred Thirty-One Thousand Six Hundred Ninety-Seven (22,831,697) shares of Landcadia Common Stock in consideration for the consummation of the transactions contemplated by the Merger Agreement of which Stockholder is entitled to receive the number shares (the "Shares") set forth opposite such Stockholder's name on Exhibit A hereto; and

WHEREAS, the execution and delivery of this Agreement by each recipient of Shares is a condition precedent to the obligations of Landcadia to consummate the transactions contemplated by the Merger Agreement.

NOW, THEREFORE, in consideration of the transactions contemplated by the Merger Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Stockholder and Landcadia hereby agree as follows:

1. Stockholder hereby acknowledges and agrees that, during the period beginning on the date hereof and ending upon the expiration of the Lockup Period, Stockholder shall not:

(a) sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option to purchase or otherwise dispose of or agree to dispose of, directly or indirectly, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any portion of the Shares;

(b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of the Shares, whether any such transaction is to be settled by delivery of Shares or such other securities, in cash or otherwise; or

(c) publicly announce any intention to effect any transaction specified in clause (a) or (b).

As used herein, the term "Lockup Period" means one (1) year after the date of the Closing or earlier if, subsequent to the Closing, (i) the last sale price of Landcadia Common Stock equals or exceeds $12.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any twenty (20) trading days within any thirty- (30) trading day period commencing at least one hundred fifty (150) days after the Closing or (ii) Landcadia consummates a subsequent liquidation, merger, stock exchange or other similar transaction that results in all of Landcadia's stockholders having the right to exchange their shares of common stock for cash, securities or other property.

2. Notwithstanding the provisions of paragraph 1 above, Stockholder may transfer any of the Shares:

(a) if the Stockholder is an entity, to any of Stockholder's officers or directors or any affiliates or family members of any of Stockholder's officers or directors,

(b) if the Stockholder is an individual,

(i) by gift to a member of the individual's immediate family, to a trust, the beneficiary of which is a member of the individual's immediate family or an affiliate of such person, or to a charitable organization;

(ii) by virtue of laws of descent and distribution upon death of the individual;

(iii) pursuant to a qualified domestic relations order;

(c) by virtue of the laws of the state of Delaware; or

(d) in the event of the Landcadia's completion of a liquidation, merger, stock exchange or other similar transaction that results in all of the Landcadia's stockholders having the right to exchange their shares of Landcadia Common Stock for cash, securities or other property.

provided, however, that in the case of clauses (a) and (b), these permitted transferees must enter into a written agreement agreeing to be bound by these transfer restrictions.

3. Stockholder hereby represents and warrants to Landcadia that such Stockholder has full power and authority to enter into this Agreement.

4. Landcadia shall cause each of the certificates evidencing the Shares to be legended with the applicable transfer restrictions. Stockholder agrees and consents to the entry of stop transfer instructions with transfer agent and registrar against the transfer of the Shares, except in compliance with this Agreement, and Landcadia and its transfer agent are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Agreement.

5. This Agreement constitutes the entire agreement among the parties hereto and supersedes all prior understandings, agreements, or representations by or among the parties hereto, written or oral, to the extent they relate in any way to the subject matter hereof.

6. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns.

7. This Agreement and any claim, controversy or dispute arising out of or related to this Agreement or the interpretation and enforcement of the rights and duties of the parties, whether arising in law or equity, whether in contract, tort, under statute or otherwise, shall be governed by and construed in accordance with the domestic Laws of the State of Delaware (including in respect of the statute of limitations or other limitations period applicable to any such claim, controversy or dispute), without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

8. All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when delivered personally to the recipient, (b) when sent by facsimile, on the date of transmission to such recipient, (c) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), or (d) four (4) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the address or facsimile number indicated on the books and records of Landcadia or such other address as a party shall subsequently provide.

9. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the parties hereto and approved in writing by the Audit Committee of the Board of Directors of Landcadia. No waiver by any party hereto of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the party making such waiver and, in the case of Landcadia, approved in writing by the Audit Committee of the Board of Directors of Landcadia nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

10. Each of the parties hereto hereby acknowledges and agrees that irreparable damage would occur if any of the provisions of this Agreement are not performed in accordance with their specific terms and in the event of breach of this Agreement by a party hereto, the non-breaching party would not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which the non-breaching party may be entitled, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

11. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

12. This Agreement may be executed in one or more counterparts (including by means of electronic mail or facsimile), each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other parties hereto. The parties hereto agree that the delivery of this Agreement may be effected by means of an exchange of facsimile signatures or other electronic delivery.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Stockholder Lockup Agreement on the date first above written.

WAITR HOLDINGS INC.

By: _____
Name: Chris Meaux
Title: Chief Executive Officer

STOCKHOLDER

By: _____
Name:
Title:

[Signature Page to Stockholder Lockup Agreement]

Exhibit 10.20

WAITR HOLDINGS INC.

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("***Agreement***") is made as of this ____ day of _____, 20____ by and between Waitr Holdings Inc., a Delaware corporation (the "***Company***"), and the undersigned officer, director or employee of the Company ("***Indemnitee***").

WHEREAS, the Company and Indemnitee recognize the increasing difficulty in obtaining directors' and officers' liability insurance, the significant increases in the cost of such insurance and the general reductions in the coverage of such insurance;

WHEREAS, the Company and Indemnitee further recognize the substantial increase in corporate litigation in general, subjecting officers, directors and employees to expensive litigation risks at the same time as the availability and coverage of liability insurance has been severely limited;

WHEREAS, the Company desires to attract and retain the services of highly qualified individuals such as Indemnitee to serve as officers, directors or employees of the Company;

WHEREAS, it is reasonable, prudent and in the best interests of the Company and its stockholders for the Company contractually to obligate itself to indemnify persons serving as officers, directors or employees of the Company to the fullest extent permitted by applicable law in order that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified; and

WHEREAS, this Agreement is being entered into as part of the Indemnitee's total compensation for serving as an officer, director or employee of the Company, as applicable.

NOW THEREFORE, in consideration for Indemnitee's services as an officer, director or employee of the Company and the covenants contained herein, the Company and Indemnitee hereby agree as follows:

1. Indemnification.

(a) Third Party Proceedings. The Company shall indemnify Indemnitee if Indemnitee is or was a party or is threatened to be made a party or otherwise involved (including involvement as a witness) to any threatened, pending or completed action, suit, proceeding or any alternative dispute resolution mechanism, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, by reason of any action or inaction on the part of Indemnitee while a director, officer, employee or agent of the Company or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, against all expenses (including attorneys' fees), judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred or suffered by Indemnitee in connection with such action, suit or proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, either (i) had reasonable cause to believe Indemnitee's conduct was lawful or (ii) had no reasonable cause to believe Indemnitee's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Company or, with respect to any criminal action or proceeding, either did not have reasonable cause to believe that Indemnitee's conduct was lawful or had reasonable cause to believe that Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee if Indemnitee was or is a party or is threatened to be made a party or otherwise involved (including involvement as a witness) to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, by reason of any action or inaction on the part of Indemnitee while a director, officer, employee or agent of the Company or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, against all expenses (including attorneys' fees) and, to the fullest extent permitted by law, amounts paid in settlement actually and reasonably incurred or suffered by Indemnitee in connection with the defense or settlement of such action or suit if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

(c) Actions where Indemnitee is Deceased. If Indemnitee was or is a party, or is threatened to be made a party, to any proceeding by reason of the fact that he or she is or was a director, officer or employee of the Company or by reason of anything done or not done by Indemnitee in any such capacity, and prior to, during the pendency of, or after completion of, such proceeding, Indemnitee shall die, then the Company shall indemnify, defend and hold harmless the estate, heirs and legatees of Indemnitee against any and all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred by such estate, heirs or legatees in connection with the investigation, defense, settlement or appeal of such proceeding on the same basis as provided for Indemnitee in subsections (a) and (b) of this Section 1.

(d) Mandatory Payment of Expenses. To the fullest extent permitted by applicable law and to the extent that Indemnitee has served as a witness on behalf of the Company or has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this Section 1, or in defense of any claim, issue or matter therein, Indemnitee shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by Indemnitee in connection therewith.

2. Agreement to Serve. In consideration of the protection afforded by this Agreement, if Indemnitee is a director of the Company, he or she agrees to serve at least for the six months after the effective date of this Agreement as a director and not to resign voluntarily during such period without the written consent of a majority of the Board of Directors of the Company. If Indemnitee is an officer of the Company not serving under an employment contract, he or she agrees to serve in such capacity at least for the balance of the current fiscal year of the Company and not to resign voluntarily during such period without the written consent of a majority of the Board of Directors of the Company. Following the applicable period set forth above, Indemnitee agrees to continue to serve in such capacity at the will of the Company (or under separate agreement, if such agreement exists) so long as he or she is duly appointed or elected and qualified in accordance with the applicable provisions of the Bylaws of the Company or until such time as he or she tenders his or her resignation in writing. Nothing contained in this Agreement is intended to create in Indemnitee any right to continued employment.

3. Expenses; Indemnification Procedure.

(a) Advancement of Expenses. The Company shall advance all expenses incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or criminal action, suit or proceeding referenced in Section 1(a) or (b) ("***Proceeding***") (but not amounts actually paid in settlement of any such action, suit or Proceeding). Indemnitee hereby undertakes to repay such amounts advanced (without interest) only if, and to the extent that, it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Company as authorized hereby. No other form of undertaking shall be required other than the execution of this agreement. The advances to be made hereunder shall be paid by the Company to Indemnitee within twenty (20) days following delivery of a written request therefor by Indemnitee to the Company. Such request shall reasonably evidence the expenses and costs incurred by the Indemnitee in connection therewith. The Company's obligation to provide an advancement of expenses is subject to the following conditions: (a) if the proceeding arose in connection with Indemnitee's service as a director or officer, as applicable, then the Indemnitee or his or her representative shall have executed and delivered to the Company an undertaking, which need not be secured and shall be accepted without reference to Indemnitee's financial ability to make repayment, by or on behalf of Indemnitee to repay all advances if and to the extent that it shall ultimately be determined by a final, unappealable decision rendered by a court having jurisdiction over the parties and the question that Indemnitee is not entitled to be indemnified for such advances under this Agreement or otherwise; (b) Indemnitee shall give the Company such information and cooperation as it may reasonably request and as shall be within Indemnitee's power; and (c) Indemnitee shall furnish, upon request by the Company and if required under applicable law, a written affirmation of Indemnitee's good faith belief that any applicable standards of conduct have been met by Indemnitee. Indemnitee's entitlement to such advances shall include those incurred in connection with any proceeding by Indemnitee seeking an adjudication pursuant to this Agreement.

(b) Notice/Cooperation by Indemnitee. Indemnitee shall give the Company notice in writing as soon as practicable of any Proceeding or claim made against Indemnitee for which indemnification will or could be sought under this Agreement. The written notification to the Company shall include a description of the nature of the claim or Proceeding and the facts underlying, in each case to the extent known to Indemnitee. Notice to the Company shall be directed to the Chief Financial Officer of the Company at the address shown on the signature page of this Agreement (or such other address as the Company shall designate in writing to Indemnitee). Notice shall be deemed received three (3) business days after the date postmarked if sent by domestic certified or registered mail, properly addressed; or five (5) business days if sent by airmail from a country outside of North America; otherwise, notice shall be deemed received when such notice shall actually be received by the Company. The failure by Indemnitee to notify the Company hereunder will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement, except to the extent (solely with respect to the indemnity hereunder) that such failure or delay materially prejudices the Company. In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) Procedure. Any indemnification and advances provided for in Section 1 and this Section 3 shall be made no later than forty-five (45) days (or, in the case of an advance of expenses, twenty (20) days) after receipt of the written request of Indemnitee. If the Company fails to respond within sixty (60) days of a written request for indemnification, the Company shall be deemed to have approved the request. If a claim under this Agreement, under any statute or under any provision of the Company's Certificate of Incorporation or Bylaws providing for indemnification is not paid in full by the Company within forty-five (45) days (or, in the case of an advance of expenses, twenty (20) days) after a written request for payment thereof has first been received by the Company, Indemnitee may, but need not, at any time thereafter, bring an action against the Company to recover the unpaid amount of the claim and, subject to Section 14 of this Agreement, Indemnitee shall also be entitled to be paid for the expenses (including attorneys' fees) of bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any action, suit or proceeding in advance of its final disposition) that Indemnitee has not met the standards of conduct which make it permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed. However, Indemnitee shall be entitled to receive interim payments of expenses pursuant to Section 3(a) unless and until such defense may be finally adjudicated by court order or judgment from which no further right of appeal exists. It is the parties' intention that if the Company contests Indemnitee's right to indemnification the question of Indemnitee's right to indemnification shall be for the court to decide, and neither the failure of the Company (including its Board of Directors, any committee or subgroup of its Board of Directors, independent legal counsel or its stockholders) to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct required by applicable law, nor an actual determination by the Company (including its Board of Directors, any committee or subgroup of its Board of Directors, independent legal counsel or its stockholders) that Indemnitee has not met such applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct.

(d) Selection of Counsel. In the event the Company shall be obligated under Section 3(a) to advance the expenses of any Proceeding against Indemnitee, the Indemnitee shall have the right to control and defend such Proceeding in such manner as it may deem appropriate. Should Indemnitee decline to control and defend the Proceeding, the Company shall assume the defense of such Proceeding, with counsel approved by Indemnitee, upon the delivery to Indemnitee of written notice of its election and approval of counsel by Indemnitee, which approval shall not be unreasonably withheld. After the delivery of such notice, approval of such counsel by Indemnitee and retention of such counsel by the Company, the Company shall not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same Proceeding, except as provided below. The Indemnitee shall have the right to employ his or her own counsel in any such proceeding at Indemnitee's expense unless: (i) the employment of counsel by Indemnitee has been previously authorized by the Company, (ii) Indemnitee shall have reasonably concluded that there may be a material conflict of interest between the Company and Indemnitee in the conduct of any such defense or (iii) the Company shall not, in fact, have employed counsel to assume the defense of such Proceeding, in each of which cases the fees and expenses of Indemnitee's counsel shall be at the expense of the Company. The Company shall not settle any Proceeding (in whole or in part) if such settlement would impose any Expense, judgment, liability, fine, penalty or limitation on Indemnitee which Indemnitee is not entitled to be indemnified hereunder without the Indemnitee's prior written consent.

4. Additional Indemnification Rights; Nonexclusivity.

(a) Scope. Notwithstanding any other provision of this Agreement, the Company hereby agrees to indemnify Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, by the Company's Certificate of Incorporation or Bylaws or by statute. In the event of any change after the date of this Agreement in any applicable law, statute or rule which expands the right of a Delaware corporation to indemnify a member of its board of directors or an officer or employee of the Company, such changes shall be, ipso facto, within the purview of Indemnitee's rights and the Company's obligations under this Agreement. In the event of any change in any applicable law, statute or rule which narrows the right of a Delaware corporation to indemnify a member of its board of directors or an officer or employee of the Company, such changes, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder.

(b) Nonexclusivity. The indemnification provided by this Agreement shall not be deemed exclusive of any rights to which Indemnitee may be entitled under the Company's Certificate of Incorporation or Bylaws, any agreement, any vote of stockholders or disinterested directors, the General Corporation Law of the State of Delaware (the "***DGCL***") or otherwise, both as to action in Indemnitee's official capacity and as to action in another capacity while holding such office. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though he or she may have ceased to serve in such capacity at the time of any action, suit or other covered proceeding.

5. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the expenses, judgments, fines or penalties actually or reasonably incurred by him or her in the investigation, defense, appeal or settlement of any civil or criminal action, suit or proceeding, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such actual and reasonable expenses, judgments, fines or penalties to which Indemnitee is entitled.

6. Mutual Acknowledgement. Both the Company and Indemnitee acknowledge that in certain instances Federal law or applicable public policy may prohibit the Company from indemnifying its directors, officers and employees under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

7. Directors and Officers Liability Insurance.

(a) The Company shall obtain and maintain a policy or policies of insurance ("***D&O Liability Insurance***") with reputable insurance companies providing liability insurance for directors and officers of the Company in their capacities as such (and for any capacity in which any director or officer of the Company serves any other person or entity at the request of the Company), in respect of acts or omissions occurring while serving in such capacity, on terms with respect to coverage and amount (including with respect to the payment of expenses) no less favorable than those of such policy in effect on the date hereof except for any changes approved by the Board of Directors of the Company.

(b) Indemnitee shall be covered by the Company's D&O Liability Insurance policies as in effect from time to time in accordance with the applicable terms to the maximum extent of the coverage available for any other director or officer under such policies. The Company shall, promptly after receiving notice of a proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), give notice of such proceeding to the insurers under the Company's D&O Liability Insurance policies in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable actions to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies. The failure or refusal of any such insurer to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(c) Upon request by Indemnitee, the Company shall provide to Indemnitee copies of the D&O Liability Insurance policies as in effect from time to time. The Company shall promptly notify Indemnitee of any material changes in such insurance coverage.

8. Presumptions and Burdens of Proof; Effect of Certain Proceedings.

(a) In making any determination as to Indemnitee's entitlement to indemnification hereunder, Indemnitee shall be entitled to a presumption that he is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 3(c), and the Company shall have the burdens of coming forward with evidence and of persuasion to overcome that presumption.

(b) The termination of any proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption (i) that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company, (ii) that with respect to any criminal proceeding, Indemnitee either did not have reasonable cause to believe that Indemnitee's conduct was lawful or had reasonable cause to believe that his or her conduct was unlawful or (iii) that Indemnitee did not otherwise satisfy the applicable standard of conduct to be indemnified pursuant to this Agreement.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Company or other person or entity, as applicable, including financial statements, or on information supplied to Indemnitee by the officers of such person or entity in the course of their duties, or on the advice of legal counsel for such entity or on information or records given or reports made to such entity by an independent certified public accountant, appraiser or other expert selected with reasonable care by such entity. The provisions of this Section 8(c) shall not be deemed to be exclusive or to limit in any way other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct to be indemnified pursuant to this Agreement.

(d) The knowledge or actions or failure to act of any other director, officer, employee or agent of the Company or other person or entity, as applicable, shall not be imputed to Indemnitee for purposes of determining Indemnitee's right to indemnification under this Agreement.

9. Severability. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 9. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the fullest extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

10. Exceptions. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) Claims Initiated by Indemnitee. To indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or any other statute or law or otherwise as required under Section 145 of the DGCL, but such indemnification or advancement of expenses may be provided by the Company in specific cases if its Board of Directors has approved the initiation or bringing of such suit; or

(b) Lack of Good Faith. To indemnify Indemnitee for any expenses incurred by Indemnitee with respect to any proceeding instituted by Indemnitee to enforce or interpret this Agreement, if a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous; or

(c) Insured Claims. To indemnify Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts paid in settlement) which have been paid directly to Indemnitee by an insurance carrier under a policy of directors and officers liability insurance maintained by the Company; or

(d) Claims under Section 16(b). To indemnify Indemnitee for the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934 (the "***Exchange Act***"), as amended, or any similar successor statute; or

(e) Claims under the Sarbanes-Oxley Act. To indemnify Indemnitee for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "***Sarbanes-Oxley Act***"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act).

11. Construction of Certain Terms and Phrases.

(a) For purposes of this Agreement, references to the "Company" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger with the Company, which constituent corporation, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnitee is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(b) For purposes of this Agreement, references to "other enterprises" shall include employee benefit plans; and references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan or its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

13. Successors and Assigns. This Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitee and Indemnitee's estate, heirs, legal representatives and assigns. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

14. Attorneys' Fees. In the event that any action is instituted by Indemnitee under this Agreement to enforce or interpret any of the terms hereof, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee with respect to such action, unless as a part of such action, the court of competent jurisdiction determines that each of the material assertions made by Indemnitee as a basis for such action was not made in good faith or was frivolous. In the event of an action instituted by or in the name of the Company under this Agreement or to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by Indemnitee in defense of such action (including with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that each of Indemnitee's material defenses to such action was made not in good faith or was frivolous.

15. Non-Disclosure of Payments. Except as expressly required by law, neither the Indemnitee nor the Company shall disclose any payments under this Agreement unless prior approval of the other party is obtained.

16. Notice. Except as provided in Section 3(b), all notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and receipted for by the party addressee, on the date of such receipt, or (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked. Addresses for notice to either party are as shown on the signature page of this Agreement, or as subsequently modified by written notice.

17. Consent to Jurisdiction. The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the state courts of the State of Delaware.

18. Choice of Law. This Agreement shall be governed by and its provisions construed in accordance with the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware without regard to the conflict of law principles thereof.

19. Period of Limitations. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

20. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights.

21. Primary Responsibility**.** Indemnitee has certain rights to indemnification and/or insurance provided by Company which Indemnitee and Company intend to be primary to the secondary obligation of Company to indemnify Indemnitee as provided herein. Accordingly, Indemnitee agrees that (i) Company is the indemnitor of second resort (*i.e.*, its obligations to Indemnitee are secondary and any obligation of any insurance company, corporation, partnership, joint venture, trust, enterprise or nonprofit entity to insure, indemnify or advance expenses are primary), and (ii) Company's obligation, if any, to indemnify or advance expenses to the Indemnitee shall be reduced by any amount such person may collect as insurance, indemnification or advancement form any insurance company, corporation, partnership, joint venture, trust, enterprise or nonprofit entity.

22. Retroactivity. This Agreement shall be deemed to have been in effect during all periods that Indemnitee was a director, officer or employee of the Company, regardless of the date of this Agreement.

23. Amendment and Termination. No amendment, modification, termination or cancellation of this Agreement shall be effective unless it is in a writing signed by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

24. Integration and Entire Agreement. Subject to the provisions of Section 4, this Agreement sets forth the entire understanding between the parties hereto and supersedes and merges all previous written and oral negotiations, commitments, understandings and agreements relating to the subject matter hereof between the parties hereto.

[signature page follows]

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

WAITR HOLDINGS INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

Address for notice:

844 Ryan Street, Suite 300
Lake Charles, LA 70601

AGREED TO AND ACCEPTED:

INDEMNITEE:

By: _____
Name: _____
Title: _____

Address for notice:

_____
_____
_____

Exhibit 10.21

WAITR HOLDINGS INC.
2018 OMNIBUS INCENTIVE PLAN

Section 1. General.

The name of the Plan is the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "*Plan*"). The Plan intends to: (*i*) encourage the profitability and growth of the Company through short-term and long-term incentives that are consistent with the Company's objectives; (*ii*) give Participants an incentive for excellence in individual performance; (*iii*) promote teamwork among Participants; and (*iv*) give the Company a significant advantage in attracting and retaining key Employees, Directors, and Consultants. To accomplish such purposes, the Plan provides that the Company may grant Options, Stock Appreciation Rights, Restricted Shares, Restricted Stock Units, Performance-Based Awards (including performance-based Restricted Shares and Restricted Stock Units), Other Stock-Based Awards, Other Cash-Based Awards or any combination of the foregoing.

Section 2. Definitions.

For purposes of the Plan, the following terms shall be defined as set forth below:

(a) "*Administrator*" means the Board, or, if and to the extent the Board does not administer the Plan, the Committee appointed by the Board to administer the Plan in accordance with Section 3 of the Plan.

(b) "*Affiliate*" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified. An entity shall be deemed an Affiliate of the Company for purposes of this definition only for such periods as the requisite ownership or control relationship is maintained.

(c) "*Automatic Exercise Date*" means, with respect to an Option or a Stock Appreciation Right, the last business day of the applicable term of the Option pursuant to Section 7(d) or the Stock Appreciation Right pursuant to Section 8(g).

(d) "*Award*" means any Option, Stock Appreciation Right, Restricted Share, Restricted Stock Unit, Performance-Based Award, Other Stock-Based Award, or Other Cash-Based Award granted under the Plan.

(e) "*Award Agreement*" means any agreement, contract, or other instrument or document evidencing an Award. Evidence of an Award may be in written or electronic form, may be limited to notation on the books and records of the Company and, with the approval of the Administrator, need not be signed by a representative of the Company or a Participant. Any Shares that become deliverable to the Participant pursuant to the Plan may be issued in certificate form in the name of the Participant or in book-entry form in the name of the Participant.

(f) "*Bylaws*" means the bylaws of the Company, as may be amended and/or restated from time to time.

(g) "*Beneficial Owner*" (or any variant thereof) has the meaning defined in Rule 13d-3 under the Exchange Act.

(h) "*Board*" means the Board of Directors of the Company.

(i) "*Cause*" shall have the meaning assigned to such term in any Company or Affiliate employment, severance, or similar agreement or Award Agreement with the Participant or, if no such agreement exists or the agreement does not define "Cause," Cause means (*i*) any conduct, action or behavior by a Participant, whether or not in connection with the Participant's employment, including, without limitation, the commission of any felony or a lesser crime involving dishonesty, fraud, misappropriation, theft, wrongful taking of property, embezzlement, bribery, forgery, extortion or other crime of moral turpitude, that has or may reasonably be expected to have a material adverse effect on the reputation or business of the Company, its Subsidiaries and Affiliates or which results in gain or personal enrichment of the Participant to the detriment of the Company, its Subsidiaries and Affiliates; (*ii*) a governmental authority has prohibited the Participant from working or being affiliated with the Company, its Subsidiaries and Affiliates or the business conducted thereby; (*iii*) the commission of any act by the Participant of gross negligence or malfeasance, or any willful violation of law, in each case, in connection with the Participant's performance of his or her duties with the Company or a Subsidiary or Affiliate thereof; (*iv*) performance of the Participant's duties in an unsatisfactory manner after a written warning and a ten (10) day opportunity to cure or failure to observe material policies generally applicable to employees after a written warning and a ten (10) day opportunity to cure; (*v*) breach of the Participant's duty of loyalty to the Company Group; (*vi*) chronic absenteeism; (*vii*) substance abuse, illegal drug use, or habitual insobriety; or (*viii*) violation of obligations of confidentiality to any third party in the course of providing services to the Company, its Subsidiaries and Affiliates.

(j) "*Certificate of Incorporation*" means the certificate of incorporation of the Company, as may be amended and/or restated from time to time.

(k) "*Change in Capitalization*" means any (*i*) merger, consolidation, reclassification, recapitalization, spin-off, spin-out, repurchase or other reorganization or corporate transaction or event, (*ii*) extraordinary dividend (whether in the form of cash, Common Stock or other property), stock split or reverse stock split, (*iii*) combination or exchange of shares, (*iv*) other change in corporate structure, or (*v*) payment of any other distribution, which, in any such case, the Administrator determines, in its sole discretion, affects the Shares such that an adjustment pursuant to Section 5 of the Plan is appropriate.

(l) "*Change in Control*" shall be deemed to have occurred if an event set forth in any one of the following paragraphs shall have occurred following the Effective Date:

(i) any Person, other than the Company or a trustee or other fiduciary holding securities under an employee benefit plan of the Company, becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities, excluding any Person who becomes such a Beneficial Owner in connection with a transaction described in clause (*A*) of paragraph (*iii*) below or any acquisition directly from the Company; or

(ii) the following individuals cease for any reason to constitute a majority of the number of Directors then serving on the Board: individuals who, during any period of two (2) consecutive years, constitute the Board and any new Director (other than a Director whose initial assumption of office is in connection with an actual or threatened election contest, including, but not limited to, a consent solicitation, relating to the election of Directors of the Company) whose appointment or election by the Board or nomination for election by the Company's stockholders was approved or recommended by a vote of at least two-thirds (2/3) of the Directors then still in office who either were Directors at the beginning of the two (2) year period or whose appointment, election or nomination for election was previously so approved or recommended; or

(iii) there is consummated a merger or consolidation of the Company or any Subsidiary thereof with any other corporation, other than a merger or consolidation (*A*) that results in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the combined voting power of the voting securities of the Company (or such surviving entity or, if the Company or the entity surviving such merger is then a subsidiary, the ultimate parent thereof) outstanding immediately after such merger or consolidation, and (*B*) immediately following which the individuals who comprise the Board immediately prior thereto constitute at least a majority of the Board of the entity surviving such merger or consolidation or, if the Company or the entity surviving such merger is then a subsidiary, the ultimate parent thereof; or

(iv) the consummation of a plan of complete liquidation or dissolution of the Company or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets, other than (*A*) a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least fifty percent (50%) of the combined voting power of the voting securities of which are owned directly or indirectly by stockholders of the Company following the completion of such transaction in substantially the same proportions as their ownership of the Company immediately prior to such sale or (*B*) a sale or disposition of all or substantially all of the Company's assets immediately following which the individuals who comprise the Board immediately prior thereto constitute at least a majority of the board of directors of the entity to which such assets are sold or disposed or, if such entity is a subsidiary, the ultimate parent thereof.

For each Award that constitutes deferred compensation under Code Section 409A, a Change in Control (where applicable) shall be deemed to have occurred under the Plan with respect to such Award only if a change in the ownership or effective control of the Company or a change in ownership of a substantial portion of the assets of the Company shall also constitute a "change in control event" under Code Section 409A.

Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the holders of Common Stock immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in an entity which owns all or substantially all of the assets of the Company immediately following such transaction or series of transactions.

(m) "*Change in Control Price*" shall have the meaning set forth in Section 12 of the Plan.

(n) "*Code*" means the Internal Revenue Code of 1986, as amended from time to time, or any successor thereto. Any reference in the Plan to any section of the Code shall be deemed to include any regulations or other interpretative guidance under such section, and any amendments or successor provisions to such section, regulations or guidance.

(o) "*Committee*" means any committee or subcommittee the Board may appoint to administer the Plan. Subject to the discretion of the Board, the Committee shall be composed entirely of individuals who meet the qualifications of a "non-employee director" within the meaning of Rule 16b-3 under the Exchange Act and any other qualifications required by the applicable stock exchange on which the Common Stock is traded. If at any time or to any extent the Board shall not administer the Plan, then the functions of the Administrator specified in the Plan shall be exercised by the Committee. Except as otherwise provided in the Company's Certificate of Incorporation or Bylaws, or any charter establishing the Committee, any action of the Committee with respect to the administration of the Plan shall be taken by a majority vote at a meeting at which a quorum is duly constituted or unanimous written consent of the Committee's members.

(p) "*Common Stock*" means the common stock, par value $0.0001 per share, of the Company.

(q) "*Company*" means Waitr Holdings Inc., a Delaware corporation (or any successor corporation, except as the term "Company" is used in the definition of "Change in Control" above).

(r) "*Consultant*" means any consultant or independent contractor of the Company or an Affiliate thereof, in each case, who is not an Employee, Executive Officer, or non-employee Director.

(s) "*Disability*" shall have the meaning assigned to such term in any individual employment, severance or similar agreement or Award Agreement with the Participant or, if no such agreement exists or the agreement does not define "Disability," Disability means, with respect to any Participant, that such Participant (*i*) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or (*ii*) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering Employees of the Company or an Affiliate thereof.

(t) "*Director*" means any individual who is a member of the Board on or after the Effective Date.

(u) "*Effective Date*" shall have the meaning set forth in Section 19 of the Plan.

(v) "*Eligible Recipient*" means: (*i*) an Employee; (*ii*) a non-employee Director; or (*iii*) a Consultant, in each case, who has been selected as an eligible recipient under the Plan by the Administrator. Notwithstanding the foregoing, to the extent required to avoid the imposition of additional taxes under Code Section 409A, "*Eligible Recipient*" means: an (*1*) Employee; (*2*) a non-employee Director; or (*3*) a Consultant, in each case, of the Company or a Subsidiary thereof, who has been selected as an eligible recipient under the Plan by the Administrator.

(w) *"Employee"* shall mean an employee of the Company or an Affiliate thereof, as described in Treasury Regulation Section 1.421-1(h), including an Executive Officer or Director who is also treated as an employee.

(x) *"Exchange Act"* means the Securities Exchange Act of 1934, as amended from time to time.

(y) *"Executive Officer"* means each Participant who is an executive officer (within the meaning of Rule 3b-7 under the Exchange Act) of the Company.

(z) *"Exercise Price"* means, with respect to any Award under which the holder may purchase Shares, the price per share at which a holder of such Award granted hereunder may purchase Shares issuable upon exercise of such Award.

(aa) *"Fair Market Value"* as of a particular date shall mean: (*i*) if the Common Stock is admitted to trading on a national securities exchange, the fair market value of a Share on any date shall be the closing sale price reported for such share on such exchange on such date or, if no sale was reported on such date, on the last day preceding such date on which a sale was reported; (*ii*) if the Shares are not then listed on a national securities exchange, the average of the highest reported bid and lowest reported asked prices for the Shares as reported by the National Association of Securities Dealers, Inc. Automated Quotations System or such other quotation system for the last preceding date on which there was a sale of such stock; or (*iii*) if the Shares are not then listed on a national securities exchange or traded in an over-the-counter market or the value of such Shares is not otherwise determinable, such value as determined by the Committee in good faith and in a manner not inconsistent with Code Section 409A.

(bb) *"Free Standing Rights"* shall have the meaning set forth in Section 8(a) of the Plan.

(cc) *"Incentive Stock Option"* means an Option that is intended to satisfy the requirements applicable to an "incentive stock option" described in Code Section 422.

(dd) *"Nonqualified Stock Option"* means an Option that is not intended to be an Incentive Stock Option.

(ee) *"Option"* means an option to purchase Shares granted pursuant to Section 7 of the Plan.

(ff) *"Other Cash-Based Award"* means a cash Award granted to a Participant under Section 11 of the Plan, including cash awarded as a bonus or upon the attainment of Performance Goals or otherwise as permitted under the Plan.

(gg) *"Other Stock-Based Award"* means a right or other interest granted to a Participant under the Plan that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to, Common Stock, including, but not limited to, unrestricted Shares or dividend equivalents, each of which may be subject to the attainment of Performance Goals or a period of continued employment or other terms or conditions as permitted under the Plan.

(hh) *"Outstanding Shares"* means the then outstanding shares of Common Stock of the Company, taking into account as outstanding for this purpose such Common Stock issuable upon the exercise of options or warrants, the conversion of convertible stock or debt, and the exercise of any similar right to acquire such Common Stock.

(ii) *"Participant"* means any Eligible Recipient selected by the Administrator, pursuant to the Administrator's authority provided for in Section 3 of the Plan, to receive grants of Options, Stock Appreciation Rights, Restricted Shares, Restricted Stock Units, Other Stock-Based Awards, Other Cash-Based Awards or any combination of the foregoing, and, upon his or her death, his or her successors, heirs, executors and administrators, as the case may be, solely with respect to any Awards outstanding at the date of the Eligible Recipient's death.

(jj) *"Performance-Based Award"* means any Award granted under the Plan that is subject to one or more performance goals. Any dividends or dividend equivalents payable or credited to a Participant with respect to any unvested Performance-Based Award shall be subject to the same performance goals as the Shares or units underlying the Performance-Based Award.

(kk) *"Performance Goals"* means performance goals based on one or more of the following criteria: (*i*) earnings before interest and taxes; (*ii*) earnings before interest, taxes, depreciation and amortization; (*iii*) net operating profit after tax; (*iv*) cash flow; (*v*) revenue; (*vi*) net revenues; (*vii*) sales; (*viii*) days sales outstanding; (*ix*) scrap rates; (*x*) income; (*xi*) net income; (*xii*) operating income; (*xiii*) net operating income; (*xiv*) operating margin; (*xv*) earnings; (*xvi*) earnings per share; (*xvii*) return on equity; (*xviii*) return on investment; (*xix*) return on capital; (*xx*) return on assets; (*xxi*) return on net assets; (*xxii*) total shareholder return; (*xxiii*) economic profit; (*xxiv*) market share; (*xxv*) appreciation in the fair market value, book value or other measure of value of the Company's Common Stock; (*xxvi*) expense or cost control; (*xxvii*) working capital; (*xxviii*) volume or production; (*xxix*) new products; (*xxx*) customer satisfaction; (*xxxi*) brand development; (*xxxii*) employee retention or employee turnover; (*xxxiii*) employee satisfaction or engagement; (*xxxiv*) environmental, health or other safety goals; (*xxxv*) individual performance; (*xxxvi*) strategic objective milestones; (*xxxvii*) days inventory outstanding; and (*xxxviii*) any combination of, or as applicable, a specified increase or decrease in, any of the foregoing. Where applicable, the Performance Goals may be expressed in terms of attaining a specified level of the particular criteria or the attainment of a percentage increase or decrease in the particular criteria, and may be applied to one or more of the Company or an Affiliate thereof, or a division or strategic business unit of the Company, or may be applied to the performance of the Company relative to a market index, a group of other companies or a combination thereof, all as determined by the Committee. The Performance Goals may include a threshold level of performance below which no payment shall be made (or no vesting shall occur), levels of performance at which specified payments shall be made (or specified vesting shall occur), and a maximum level of performance above which no additional payment shall be made (or at which full vesting shall occur).

(ll) *"Person"* shall have the meaning given in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof, except that such term shall not include (*i*) the Company or any Subsidiary thereof, (*ii*) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary thereof, (*iii*) an underwriter temporarily holding securities pursuant to an offering of such securities, or (*iv*) a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(mm) *"Related Rights"* shall have the meaning set forth in Section 8(a) of the Plan.

(nn) *"Restricted Shares"* means an Award of Shares granted pursuant to Section 9 of the Plan subject to certain restrictions that lapse at the end of a specified period or periods.

(oo) *"Restricted Stock Unit"* means a notional account established pursuant to an Award granted to a Participant, as described in Section 10 of the Plan, that is (*i*) valued solely by reference to Shares, (*ii*) subject to restrictions specified in the Award Agreement, and (*iii*) payable in cash or in Shares (as specified in the Award Agreement). The Restricted Stock Units awarded to the Participant will vest according to the time-based criteria or performance goals criteria specified in the Award Agreement.

(pp) *"Restricted Period"* means the period of time determined by the Administrator during which an Award or a portion thereof is subject to restrictions or, as applicable, the period of time within which performance is measured for purposes of determining whether an Award has been earned.

(qq) *"Retirement"* means a termination of a Participant's employment, other than for Cause and other than by reason of death or Disability, on or after the attainment of age 65.

(rr) *"Rule 16b-3"* shall have the meaning set forth in Section 3(a) of the Plan.

(ss) *"Shares"* means shares of Common Stock reserved for issuance under the Plan, as adjusted pursuant to the Plan, and any successor (pursuant to a merger, consolidation or other reorganization) security.

(tt) *"Stock Appreciation Right"* means the right pursuant to an Award granted under Section 8 of the Plan to receive an amount equal to the excess, if any, of (*i*) the aggregate Fair Market Value, as of the date such Award or portion thereof is surrendered, of the Shares covered by such Award or such portion thereof, over (*ii*) the aggregate Exercise Price of such Award or such portion thereof.

(uu) *"Subsidiary"* means, with respect to any Person, as of any date of determination, any other Person as to which such first Person owns or otherwise controls, directly or indirectly, more than fifty percent (50%) of the voting shares or other similar interests or a sole general partner interest or managing member or similar interest of such other Person. An entity shall be deemed a Subsidiary of the Company for purposes of this definition only for such periods as the requisite ownership or control relationship is maintained. Notwithstanding the foregoing, in the case of an Incentive Stock Option or any determination relating to an Incentive Stock Option, *"Subsidiary"* means a corporation that is a subsidiary of the Company within the meaning of Code Section 424(f).

(vv) *"Substitute Award"* shall mean an Award granted under the Plan upon the assumption of, or in substitution for, outstanding equity awards granted by a company or other entity in connection with a corporate transaction, such as a merger, combination, consolidation, or acquisition of property or stock; provided, however, that in no event shall the term "Substitute Award" be construed to refer to an award made in connection with the cancellation and repricing of an Option or Stock Appreciation Right.

Section 3. Administration.

(a) The Plan shall be administered by the Administrator and shall be administered in accordance with, to the extent applicable, Rule 16b-3 under the Exchange Act (*"Rule 16b-3"*) .

(b) Pursuant to the terms of the Plan, the Administrator, subject, in the case of any Committee, to any restrictions on the authority delegated to it by the Board, shall have the power and authority, without limitation:

(i) to select those Eligible Recipients who shall be Participants;

(ii) to determine whether and to what extent Options, Stock Appreciation Rights, Restricted Shares, Restricted Stock Units, Other Stock-Based Awards, Other Cash-Based Awards or a combination of any of the foregoing, are to be granted hereunder to Participants;

(iii) to determine the number of Shares to be covered by each Award granted hereunder;

(iv) to determine the terms and conditions, not inconsistent with the terms of the Plan, of each Award granted hereunder, including, but not limited to, (*A*) the restrictions applicable to Restricted Shares and Restricted Stock Units and the conditions under which restrictions applicable to such Restricted Shares and Restricted Stock Units shall lapse, (*B*) the Performance Goals and periods applicable to Awards, if any, (*C*) the Exercise Price of each Award, (*D*) the vesting schedule applicable to each Award, (*E*) the number of Shares subject to each Award and (*F*) subject to the requirements of Code Section 409A (to the extent applicable), any amendments to the terms and conditions of outstanding Awards, including, but not limited to, extending the exercise period of such Awards and accelerating the vesting schedule of such Awards;

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan, which shall govern all written instruments evidencing Options, Stock Appreciation Rights, Restricted Shares, Restricted Stock Units or Other Stock-Based Awards, Other Cash-Based Awards or any combination of the foregoing granted hereunder;

(vi) to determine the Fair Market Value;

(vii) to determine the duration and purpose of leaves of absence which may be granted to a Participant without constituting termination of the Participant's employment for purposes of Awards granted under the Plan;

(viii) to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall from time to time deem advisable;

(ix) to reconcile any inconsistency in, correct any defect in and/or supply any omission in the Plan, any Award Agreement or other instrument or agreement relating to the Plan or an Award granted under the Plan; and

(x) to construe and interpret the terms and provisions of the Plan and any Award issued under the Plan (and any Award Agreement relating thereto), and to otherwise supervise the administration of the Plan and to exercise all powers and authorities either specifically granted under the Plan or necessary and advisable in the administration of the Plan.

(c) The Administrator shall have the right, from time to time, to delegate to one or more officers of the Company the authority of the Administrator to grant and determine the terms and conditions of Awards granted under the Plan, subject to the requirements of state law and such other limitations as the Administrator shall determine. In no event shall any such delegation of authority be permitted with respect to Awards to any members of the Board or to any Eligible Recipient who is subject to Rule 16b-3 under the Exchange Act or Section 162(m) of the Code. The Administrator shall also be permitted to delegate, to any appropriate officer or employee of the Company, responsibility for performing certain ministerial functions under the Plan. If the Administrator's authority is delegated to officers or employees in accordance with the foregoing, all provisions of the Plan relating to the Administrator shall be interpreted in a manner consistent with the foregoing by treating any such reference as a reference to such officer or employee for such purpose. Any action undertaken in accordance with the Administrator's delegation of authority hereunder shall have the same force and effect as if such action was undertaken directly by the Administrator and shall be deemed for all purposes of the Plan to have been taken by the Administrator.

(d) All decisions made by the Administrator pursuant to the provisions of the Plan shall be final, conclusive, and binding on all persons, including the Company and the Participants. No member of the Board or the Committee, or any officer or employee of the Company or any Subsidiary thereof acting on behalf of the Board or the Committee, shall be personally liable for any action, omission, determination, or interpretation taken or made in good faith with respect to the Plan, and all members of the Board or the Committee and each and any officer or employee of the Company and of any Subsidiary thereof acting on their behalf shall, to the maximum extent permitted by law, be fully indemnified and protected by the Company in respect of any such action, omission, determination or interpretation.

Section 4. Shares Reserved for Issuance Under the Plan.

(a) Subject to Section 5 of the Plan, the number of Shares that are reserved and available for issuance pursuant to Awards granted under the Plan is 5,400,000 shares of Common Stock. The maximum number of Shares that may be issued pursuant to Options intended to be Incentive Stock Options is 5,400,000 shares of Common Stock.

(b) The aggregate number of Shares reserved for Awards under the Plan will automatically increase on January 1st of each year, for a period of not more than ten (10) years, commencing on January 1st of the year following the year in which the Effective Date occurs and ending on (and including) January 1, 2028, in an amount equal to five percent (5%) of the total number of Outstanding Shares on December 31st of the preceding calendar year. Notwithstanding the foregoing, the Administrator may act prior to January 1st of a given year to provide that there will be no January 1st increase for such year or that the increase for such year will be a lesser number of Shares than provided herein.

(c) Notwithstanding the foregoing, the maximum number of Shares subject to Awards granted during any fiscal year to any non-employee Director, when taken together with any cash fees paid to such non-employee Director during the fiscal year in respect of his or her service as a Director, shall not exceed $750,000 in total value (calculating the value of any such Awards based on the grant date Fair Market Value of such Awards for financial reporting purposes).

(d) Shares issued under the Plan may, in whole or in part, be authorized but unissued Shares or Shares that shall have been or may be reacquired by the Company in the open market, in private transactions or otherwise. Any Shares subject to an Award under the Plan that, after the Effective Date, are forfeited, canceled, settled or otherwise terminated without a distribution of Shares to a Participant will thereafter be deemed to be available for Awards. In applying the immediately preceding sentence, if (*i*) Shares otherwise issuable or issued in respect of, or as part of, any Award are withheld to cover taxes, such Shares shall be treated as having been issued under the Plan and shall not again be available for issuance under the Plan, (*ii*) Shares otherwise issuable or issued in respect of, or as part of, any Award of Options or Stock Appreciation Rights are withheld to cover the Exercise Price, such Shares shall be treated as having been issued under the Plan and shall not be available for issuance under the Plan, and (*iii*) any Stock-settled Stock Appreciation Rights are exercised, the aggregate number of Shares subject to such Stock Appreciation Rights shall be deemed issued under the Plan and shall not be available for issuance under the Plan.

(e) Substitute Awards shall not reduce the Shares authorized for grant under the Plan. In the event that a company acquired by the Company or any Affiliate or with which the Company or any Affiliate combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan; *provided* that Awards using such available Shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not employed by or providing services to the Company or its Affiliates immediately prior to such acquisition or combination.

Section 5. Equitable Adjustments.

In the event of any Change in Capitalization, an equitable substitution or proportionate adjustment shall be made, in each case, as may be determined by the Administrator, in its sole discretion, in (*i*) the aggregate number of Shares reserved for issuance under the Plan and the maximum number of Shares that may be subject to Awards granted to any Participant in any calendar or fiscal year, (*ii*) the kind, number and Exercise Price subject to outstanding Options and Stock Appreciation Rights granted under the Plan, *provided*, *however*, that any such substitution or adjustment with respect to Options and Stock Appreciation Rights shall occur in accordance with the requirements of Code Section 409A, and (*iii*) the kind, number and purchase price of Shares subject to outstanding Restricted Shares or Other Stock-Based Awards granted under the Plan, in each case as may be determined by the Administrator, in its sole discretion; *provided*, *however*, that any fractional Shares resulting from the adjustment shall be eliminated. Such other equitable substitutions or adjustments shall be made as may be determined by the Administrator, in its sole discretion. Without limiting the generality of the foregoing, in connection with a Change in Capitalization, the Administrator may provide, in its sole discretion, for the cancellation of any outstanding Award granted hereunder in exchange for payment in cash or other property having an aggregate Fair Market Value of the Shares covered by such Award, reduced by the aggregate Exercise Price or purchase price thereof, if any. Notwithstanding anything contained in the Plan to the contrary, any adjustment with respect to an Incentive Stock Option due to an adjustment or substitution described in this Section 5 shall comply with the rules of Code Section 424(a), and in no event shall any adjustment be made which would render any Incentive Stock Option granted hereunder to be disqualified as an incentive stock option for purposes of Code Section 422. The Administrator's determinations pursuant to this Section 5 shall be final, binding and conclusive.

Section 6. Eligibility.

The Participants under the Plan shall be selected from time to time by the Administrator, in its sole discretion, from among Eligible Recipients.

Section 7. Options.

(a) *General.* The Committee may, in its sole discretion, grant Options to Participants. Solely with respect to Participants who are Employees, the Committee may grant Incentive Stock Options, Nonqualified Stock Options or a combination of both. With respect to all other Participants, the Committee may grant only Nonqualified Stock Options. Each Participant who is granted an Option shall enter into an Award Agreement with the Company, containing such terms and conditions as the Administrator shall determine, in its sole discretion, which Award Agreement shall specify whether the Option is an Incentive Stock Option or a Nonqualified Stock Option and shall set forth, among other things, the Exercise Price of the Option, the term of the Option and provisions regarding exercisability of the Option granted thereunder. The provisions of each Option need not be the same with respect to each Participant. More than one Option may be granted to the same Participant and be outstanding concurrently hereunder. Options granted under the Plan shall be subject to the terms and conditions set forth in this Section 7 and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable and set forth in the applicable Award Agreement. The prospective recipient of an Option shall not have any rights with respect to such Award, unless and until such recipient has received an Award Agreement and, if required by the Administrator in the Award Agreement, executed and delivered a fully executed copy thereof to the Company, within a period of sixty (60) days (or such other period as the Administrator may specify) after the award date.

(b) *Limits on Incentive Stock Options.* If the Administrator grants Incentive Stock Options, then to the extent that the aggregate fair market value of Shares with respect to which Incentive Stock Options are exercisable for the first time by any individual during any calendar year (under all plans of the Company) exceeds $100,000, such Options will be treated as Nonqualified Stock Options to the extent required by Code Section 422.

(c) *Exercise Price.* The Exercise Price of Shares purchasable under an Option shall be determined by the Administrator in its sole discretion at the time of grant; *provided*, *however*, that (*i*) in no event shall the Exercise Price of an Option be less than one hundred percent (100%) of the Fair Market Value of the Common Stock on the date of grant, and (*ii*) no Incentive Stock Option granted to a ten percent (10%) stockholder of the Company's Common Stock (within the meaning of Code Section 422(b)(6)) shall have an exercise price per share less than one-hundred ten percent (110%) of the Fair Market Value of a Share on such date.

(d) *Option Term.* The maximum term of each Option shall be fixed by the Administrator, but in no event shall (*i*) an Option be exercisable more than ten (10) years after the date such Option is granted, and (*ii*) an Incentive Stock Option granted to a ten percent (10%) stockholder of the Company's Common Stock (within the meaning of Code Section 422(b)(6)) be exercisable more than five (5) years after the date such Option is granted. Each Option's term is subject to earlier expiration pursuant to the applicable provisions in the Plan and the Award Agreement. Notwithstanding the foregoing, the Administrator shall have the authority to accelerate the exercisability of any outstanding Option at such time and under such circumstances as the Administrator, in its sole discretion, deems appropriate. Notwithstanding any contrary provision herein, if, on the date an outstanding Option would expire, the exercise of the Option, including by a "net exercise" or "cashless" exercise, would violate applicable securities laws or any insider trading policy maintained by the Company from time to time, the expiration date applicable to the Option will be extended, except to the extent such extension would violate Section 409A, to a date that is thirty (30) calendar days after the date the exercise of the Option would no longer violate applicable securities laws or any such insider trading policy.

(e) *Exercisability.* Each Option shall be exercisable at such time or times and subject to such terms and conditions, including the attainment of pre-established Performance Goals, as shall be determined by the Administrator in the applicable Award Agreement. The Administrator may also provide that any Option shall be exercisable only in installments, and the Administrator may waive such installment exercise provisions at any time, in whole or in part, based on such factors as the Administrator may determine in its sole discretion. Notwithstanding anything to the contrary contained herein, an Option may not be exercised for a fraction of a share.

(f) *Method of Exercise.* Options may be exercised in whole or in part by giving written notice of exercise to the Company specifying the number of Shares to be purchased, accompanied by payment in full of the aggregate Exercise Price of the Shares so purchased in cash or its equivalent, as determined by the Administrator. As determined by the Administrator, in its sole discretion, with respect to any Option or category of Options, payment in whole or in part may also be made (*i*) by means of consideration received under any cashless exercise procedure approved by the Administrator (including the withholding of Shares otherwise issuable upon exercise), (*ii*) in the form of unrestricted Shares already owned by the Participant which have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Shares as to which such Option shall be exercised, (*iii*) any other form of consideration approved by the Administrator and permitted by applicable law or (*iv*) any combination of the foregoing. In determining which methods a Participant may utilize to pay the Exercise Price, the Administrator may consider such factors as it determines are appropriate; *provided*, *however*, that with respect to Incentive Stock Options, all such discretionary determinations shall be made by the Administrator at the time of grant and specified in the Award Agreement.

(g) *Rights as Stockholder.* A Participant shall have no rights to dividends or any other rights of a stockholder with respect to the Shares subject to an Option until the Participant has given written notice of the exercise thereof, has paid in full for such Shares and has satisfied the requirements of Section 15 of the Plan and the Shares have been issued to the Participant.

(h) *Termination of Employment or Service.*

(i) Unless the applicable Award Agreement provides otherwise, in the event that the employment or service of a Participant with the Company and all Affiliates thereof shall terminate for any reason other than Cause, Retirement, Disability, or death, (*A*) Options granted to such Participant, to the extent that they are exercisable at the time of such termination, shall remain exercisable until the date that is ninety (90) days after such termination, on which date they shall expire, and (*B*) Options granted to such Participant, to the extent that they were not exercisable at the time of such termination, shall expire at the close of business on the date of such termination. The ninety (90) day period described in this Section 7(h)(i) shall be extended to one (1) year after the date of such termination in the event of the Participant's death during such ninety (90) day period. Notwithstanding the foregoing, no Option shall be exercisable after the expiration of its term.

(ii) Unless the applicable Award Agreement provides otherwise, in the event that the employment or service of a Participant with the Company and all Affiliates thereof shall terminate on account of Retirement, Disability or the death of the Participant, (*A*) Options granted to such Participant, to the extent that they were exercisable at the time of such termination, shall remain exercisable until the date that is one (1) year after such termination, on which date they shall expire and (*B*) Options granted to such Participant, to the extent that they were not exercisable at the time of such termination, shall expire at the close of business on the date of such termination. Notwithstanding the foregoing, no Option shall be exercisable after the expiration of its term.

(iii) In the event of the termination of a Participant's employment or service for Cause, all outstanding Options granted to such Participant shall expire at the commencement of business on the date of such termination.

(iv) For purposes of this Section 7(h), Options that are not exercisable solely due to a blackout period shall be considered exercisable.

(i) *Other Change in Employment Status.* An Option may be affected, both with regard to vesting schedule and termination, by leaves of absence, changes from full-time to part-time employment, partial disability or other changes in the employment status or service of a Participant, as evidenced in a Participant's Award Agreement.

(j) *Change in Control.* Notwithstanding anything herein to the contrary, upon a Change in Control, all outstanding Options shall be subject to Section 12 of the Plan.

Section 8. Stock Appreciation Rights.

(a) *General.* Stock Appreciation Rights may be granted either alone (*"Free Standing Rights"*) or in conjunction with all or part of any Option granted under the Plan (*"Related Rights"*) . Related Rights may be granted either at or after the time of the grant of such Option. The Administrator shall determine the Eligible Recipients to whom, and the time or times at which, grants of Stock Appreciation Rights shall be made, the number of Shares to be awarded, the price per Share, and all other conditions of Stock Appreciation Rights. Notwithstanding the foregoing, no Related Right may be granted for more Shares than are subject to the Option to which it relates and any Stock Appreciation Right must be granted with an Exercise Price not less than the Fair Market Value of Common Stock on the date of grant. The provisions of Stock Appreciation Rights need not be the same with respect to each Participant. Stock Appreciation Rights granted under the Plan shall be subject to the following terms and conditions set forth in this Section 8 and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable, as set forth in the applicable Award Agreement.

(b) *Awards; Rights as Stockholder.* The prospective recipient of a Stock Appreciation Right shall not have any rights with respect to such Award, unless and until such recipient has received an Award Agreement and, if required by the Administrator in the Award Agreement, executed and delivered a fully executed copy thereof to the Company, within a period of sixty (60) days (or such other period as the Administrator may specify) after the award date. Participants who are granted Stock Appreciation Rights shall have no rights as stockholders of the Company with respect to the grant or exercise of such rights.

(c) *Exercisability.*

(i) Stock Appreciation Rights that are Free Standing Rights shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Administrator in the applicable Award Agreement.

(ii) Stock Appreciation Rights that are Related Rights shall be exercisable only at such time or times and to the extent that the Options to which they relate shall be exercisable in accordance with the provisions of Section 7 above and this Section 8 of the Plan.

(d) *Payment Upon Exercise.*

(i) Upon the exercise of a Free Standing Right, the Participant shall be entitled to receive up to, but not more than, that number of Shares, determined using the Fair Market Value, equal in value to the excess of the Fair Market Value as of the date of exercise over the price per share specified in the Free Standing Right multiplied by the number of Shares in respect of which the Free Standing Right is being exercised.

(ii) A Related Right may be exercised by a Participant by surrendering the applicable portion of the related Option. Upon such exercise and surrender, the Participant shall be entitled to receive up to, but not more than, that number of Shares, determined using the Fair Market Value, equal in value to the excess of the Fair Market Value as of the date of exercise over the Exercise Price specified in the related Option multiplied by the number of Shares in respect of which the Related Right is being exercised. Options which have been so surrendered, in whole or in part, shall no longer be exercisable to the extent the Related Rights have been so exercised.

(iii) Notwithstanding the foregoing, the Administrator may determine to settle the exercise of a Stock Appreciation Right in cash (or in any combination of Shares and cash).

(e) *Rights as Stockholder.* A Participant shall have no rights to dividends or any other rights of a stockholder with respect to the Shares subject to a Stock Appreciation Right Option until the Participant has given written notice of the exercise thereof, has satisfied the requirements of Section 15 of the Plan and the Shares have been issued to the Participant.

(f) *Termination of Employment or Service.*

(i) In the event of the termination of employment or service with the Company and all Affiliates thereof of a Participant who has been granted one or more Free Standing Rights, such rights shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Administrator in the applicable Award Agreement.

(ii) In the event of the termination of employment or service with the Company and all Affiliates thereof of a Participant who has been granted one or more Related Rights, such rights shall be exercisable at such time or times and subject to such terms and conditions as set forth in the related Options.

(g) *Term.*

(i) The term of each Free Standing Right shall be fixed by the Administrator, but no Free Standing Right shall be exercisable more than ten (10) years after the date such right is granted.

(ii) The term of each Related Right shall be the term of the Option to which it relates, but no Related Right shall be exercisable more than ten (10) years after the date such right is granted.

(h) *Change in Control.* Notwithstanding anything herein to the contrary, upon a Change in Control, all outstanding Stock Appreciation Rights shall be subject to Section 12 of the Plan.

(i) *Automatic Exercise.* Unless otherwise provided by the Administrator in an Award Agreement or otherwise, or as otherwise directed by the Participant in writing to the Company, each vested and exercisable Stock Appreciation Right outstanding on the Automatic Exercise Date with an Exercise Price per Share that is less than the Fair Market Value per Share as of such date shall automatically and without further action by the Participant or the Company be exercised on the Automatic Exercise Date. The Company or any Affiliate shall deduct or withhold an amount sufficient to satisfy all taxes associated with such exercise in accordance with Section 15. Unless otherwise determined by the Administrator, this Section 8(i) shall not apply to a Stock Appreciation Right if the Participant's employment or service has terminated on or before the Automatic Exercise Date. For the avoidance of doubt, no Stock Appreciation Right with an Exercise Price per Share that is equal to or greater the Fair Market Value per Share on the Automatic Exercise Date shall be exercised pursuant to this Section 8(i).

Section 9. Restricted Shares.

(a) *General.* Restricted Shares may be issued either alone or in addition to other Awards granted under the Plan. The Administrator shall determine the Eligible Recipients to whom, and the time or times at which, grants of Restricted Shares shall be made; the number of Shares to be awarded; the price, if any, to be paid by the Participant for the acquisition of Restricted Shares; the Restricted Period, if any, applicable to Restricted Shares; the Performance Goals (if any) applicable to Restricted Shares; and all other conditions of the Restricted Shares. If the restrictions, Performance Goals and/or conditions established by the Administrator are not attained, a Participant shall forfeit his or her Restricted Shares in accordance with the terms of the grant. The provisions of the Restricted Shares need not be the same with respect to each Participant.

(b) *Awards and Certificates.* The prospective recipient of Restricted Shares shall not have any rights with respect to any such Award, unless and until such recipient has received an Award Agreement and, if required by the Administrator in the Award Agreement, executed and delivered a fully executed copy thereof to the Company, within a period of sixty (60) days (or such other period as the Administrator may specify) after the award date. Except as otherwise provided in Section 9(c) of the Plan, (*i*) each Participant who is granted an award of Restricted Shares may, in the Company's sole discretion, be issued a stock certificate in respect of such Restricted Shares; and (*ii*) any such certificate so issued shall be registered in the name of the Participant, and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to any such Award.

The Company may require that the stock certificates, if any, evidencing Restricted Shares granted hereunder be held in the custody of the Company until the restrictions thereon shall have lapsed, and that, as a condition of any award of Restricted Shares, the Participant shall have delivered a stock power, endorsed in blank, relating to the Shares covered by such Award.

Notwithstanding anything in the Plan to the contrary, any Restricted Shares (whether before or after any vesting conditions have been satisfied) may, in the Company's sole discretion, be issued in uncertificated form pursuant to the customary arrangements for issuing shares in such form.

(c) *Restrictions and Conditions.* The Restricted Shares granted pursuant to this Section 9 shall be subject to the following restrictions and conditions and any additional restrictions or conditions as determined by the Administrator at the time of grant or thereafter:

(i) The Administrator may, in its sole discretion, provide for the lapse of restrictions in installments and may accelerate or waive such restrictions in whole or in part based on such factors and such circumstances as the Administrator may determine, in its sole discretion, including, but not limited to, the attainment of certain Performance Goals, the Participant's termination of employment or service as a non-employee Director or Consultant of the Company or an Affiliate thereof, or the Participant's death or Disability.

(ii) Except as provided in Section 16 of the Plan or in the Award Agreement, the Participant shall generally have the rights of a stockholder of the Company with respect to Restricted Shares during the Restricted Period. In the Administrator's discretion and as provided in the applicable Award Agreement, a Participant may be entitled to dividends or dividend equivalents on an Award of Restricted Shares, which will be payable in accordance with the terms of such grant as determined by the Administrator. Certificates for Shares of unrestricted Common Stock may, in the Company's sole discretion, be delivered to the Participant only after the Restricted Period has expired without forfeiture in respect of such Restricted Shares, except as the Administrator, in its sole discretion, shall otherwise determine.

(iii) The rights of Participants granted Restricted Shares upon termination of employment or service as a non-employee Director or Consultant of the Company or an Affiliate thereof terminates for any reason during the Restricted Period shall be set forth in the Award Agreement.

(d) *Change in Control.* Notwithstanding anything herein to the contrary, upon a Change in Control, all outstanding Restricted Shares shall be subject to Section 12 of the Plan.

Section 10. Restricted Stock Units.

(a) *General.* Restricted Stock Units may be issued either alone or in addition to other Awards granted under the Plan. The Administrator shall determine the Eligible Recipients to whom, and the time or times at which, grants of Restricted Stock Units shall be made; the number of Restricted Stock Units to be awarded; the Restricted Period, if any, applicable to Restricted Stock Units; the Performance Goals (if any) applicable to Restricted Stock Units; and all other conditions of the Restricted Stock Units. If the restrictions, Performance Goals and/or conditions established by the Administrator are not attained, a Participant shall forfeit his or her Restricted Stock Units in accordance with the terms of the grant. The provisions of Restricted Stock Units need not be the same with respect to each Participant.

(b) *Award Agreement.* The prospective recipient of Restricted Stock Units shall not have any rights with respect to any such Award, unless and until such recipient has received an Award Agreement and, if required by the Administrator in the Award Agreement, executed and delivered a fully executed copy thereof to the Company, within a period of sixty (60) days (or such other period as the Administrator may specify) after the award date.

(c) *Restrictions and Conditions.* The Restricted Stock Units granted pursuant to this Section 10 shall be subject to the following restrictions and conditions and any additional restrictions or conditions as determined by the Administrator at the time of grant or, subject to Code Section 409A, thereafter:

(i) The Administrator may, in its sole discretion, provide for the lapse of restrictions in installments and may accelerate or waive such restrictions in whole or in part based on such factors and such circumstances as the Administrator may determine, in its sole discretion, including, but not limited to, the attainment of certain Performance Goals, the Participant's termination of employment or service as a non-employee Director or Consultant of the Company or an Affiliate thereof, or the Participant's death or Disability.

(ii) Participants holding Restricted Stock Units shall have no voting rights. A Restricted Stock Unit may, at the Administrator's discretion, carry with it a right to dividend equivalents. Such right would entitle the holder to be credited with an amount equal to all cash dividends paid on one Share while the Restricted Stock Unit is outstanding. The Administrator, in its discretion, may grant dividend equivalents from the date of grant or only after a Restricted Stock Unit is vested.

(iii) The rights of Participants granted Restricted Stock Units upon termination of employment or service as a non-employee Director or Consultant of the Company or an Affiliate thereof terminates for any reason during the Restricted Period shall be set forth in the Award Agreement.

(d) *Settlement of Restricted Stock Units.* Settlement of vested Restricted Stock Units shall be made to Participants in the form of Shares, unless the Administrator, in its sole discretion, provides for the payment of the Restricted Stock Units in cash (or partly in cash and partly in Shares) equal to the Fair Market Value of the Shares that would otherwise be distributed to the Participant.

(e) *Rights as Stockholder.* Except as provided in the Award Agreement in accordance with Section 10(c)(ii), a Participant shall have no rights to dividends or any other rights of a stockholder with respect to the Shares subject to Restricted Stock Units until the Participant has satisfied all conditions of the Award Agreement and the requirements of Section 15 of the Plan and the Shares have been issued to the Participant.

(f) *Change in Control.* Notwithstanding anything herein to the contrary, upon a Change in Control, all outstanding Restricted Stock Units shall be subject to Section 12 of the Plan.

Section 11. Other Stock-Based or Cash-Based Awards.

(a) The Administrator is authorized to grant Awards to Participants in the form of Other Stock-Based Awards or Other Cash-Based Awards, as deemed by the Administrator to be consistent with the purposes of the Plan and as evidenced by an Award Agreement. The Administrator shall determine the terms and conditions of such Awards, consistent with the terms of the Plan, at the date of grant or thereafter, including any Performance Goals and performance periods. Common Stock or other securities or property delivered pursuant to an Award in the nature of a purchase right granted under this Section 11 shall be purchased for such consideration, paid for at such times, by such methods, and in such forms, including, without limitation, Shares, other Awards, notes or other property, as the Administrator shall determine, subject to any required corporate action.

(b) The prospective recipient of an Other Stock-Based Award or Other Cash-Based Award shall not have any rights with respect to such Award, unless and until such recipient has received an Award Agreement and, if required by the Administrator in the Award Agreement, executed and delivered a fully executed copy thereof to the Company, within a period of sixty (60) days (or such other period as the Administrator may specify) after the award date.

(c) Notwithstanding anything herein to the contrary, upon a Change in Control, all outstanding Other Stock-Based Awards and Other Cash-Based Awards shall be subject to Section 12 of the Plan.

Section 12. Change in Control.

The Administrator may provide in the applicable Award Agreement that an Award will vest on an accelerated basis upon the Participant's termination of employment or service in connection with a Change in Control or upon the occurrence of any other event that the Administrator may set forth in the Award Agreement. If the Company is a party to an agreement that is reasonably likely to result in a Change in Control, such agreement may provide for: (*i*) the continuation of any Award by the Company, if the Company is the surviving corporation; (*ii*) the assumption of any Award by the surviving corporation or its parent or subsidiary; (*iii*) the substitution by the surviving corporation or its parent or subsidiary of equivalent awards for any Award, *provided, however*, that any such substitution with respect to Options and Stock Appreciation Rights shall occur in accordance with the requirements of Code Section 409A; or (*iv*) settlement of any Award for the Change in Control Price (less, to the extent applicable, the per share exercise or grant price), or, if the per share exercise or grant price equals or exceeds the Change in Control Price or if the Administrator determines that Award cannot reasonably become vested pursuant to its terms, such Award shall terminate and be canceled without consideration. To the extent that Restricted Shares, Restricted Stock Units or other Awards settle in Shares in accordance with their terms upon a Change in Control, such Shares shall be entitled to receive as a result of the Change in Control transaction the same consideration as the Shares held by stockholders of the Company as a result of the Change in Control transaction. For purposes of this Section 12, "*Change in Control Price*" shall mean (A) the price per share of Common Stock paid to stockholders of the Company in the Change in Control transaction, or (B) the Fair Market Value of a Share upon a Change in Control, as determined by the Administrator. To the extent that the consideration paid in any such Change in Control transaction consists all or in part of securities or other non-cash consideration, the value of such securities or other non-cash consideration shall be determined in good faith by the Administrator.

Section 13. Amendment and Termination.

(a) The Board or the Committee may amend, alter or terminate the Plan, but no amendment, alteration, or termination shall be made that would impair the rights of a Participant under any Award theretofore granted without such Participant's consent.

(b) Notwithstanding the foregoing, approval of the Company's stockholders shall be obtained to increase the aggregate Share limit and annual Award limits described in Section 4.

(c) Subject to the terms and conditions of the Plan, the Administrator may modify, extend or renew outstanding Awards under the Plan, or accept the surrender of outstanding Awards (to the extent not already exercised) and grant new Awards in substitution of them (to the extent not already exercised).

(d) Notwithstanding the foregoing, no alteration, modification or termination of an Award will, without the prior written consent of the Participant, adversely alter or impair any rights or obligations under any Award already granted under the Plan.

Section 14. Unfunded Status of Plan.

The Plan is intended to constitute an "unfunded" plan for incentive compensation. With respect to any payments not yet made or Shares not yet transferred to a Participant by the Company, nothing contained herein shall give any such Participant any rights that are greater than those of a general creditor of the Company.

Section 15. Withholding Taxes.

Each Participant shall, no later than the date as of which the value of an Award first becomes includible in the gross income of such Participant for federal, state and/or local income tax purposes, pay to the Company, or make arrangements satisfactory to the Administrator regarding payment of, any federal, state, or local taxes of any kind, domestic or foreign, required by law or regulation to be withheld with respect to the Award. The obligations of the Company under the Plan shall be conditional on the making of such payments or arrangements, and the Company shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to such Participant. Whenever cash is to be paid pursuant to an Award granted hereunder, the Company shall have the right to deduct therefrom an amount sufficient to satisfy any federal, state and local withholding tax requirements related thereto. Whenever Shares are to be delivered pursuant to an Award, the Company shall have the right to require the Participant to remit to the Company in cash an amount sufficient to satisfy any related federal, state and local taxes, domestic or foreign, to be withheld and applied to the tax obligations. With the approval of the Administrator, a Participant may satisfy the foregoing requirement by electing to have the Company withhold from delivery of Shares or by delivering already owned unrestricted shares of Common Stock, in each case, having a value equal to the amount required to be withheld or such other greater amount up to the maximum statutory rate under applicable law, as applicable to such Participant, if such other greater amount would not result in adverse financial accounting treatment, as determined by the Administrator (including in connection with the effectiveness of FASB Accounting Standards Update 2016-09). Such Shares shall be valued at their Fair Market Value on the date of which the amount of tax to be withheld is determined. Fractional share amounts shall be settled in cash. Such an election may be made with respect to all or any portion of the Shares to be delivered pursuant to an Award. The Company may also use any other method of obtaining the necessary payment or proceeds, as permitted by law, to satisfy its withholding obligation with respect to any Option or other Award.

Section 16. Non-United States Employees.

Without amending the Plan, the Administrator may grant Awards to eligible persons residing in non-United States jurisdictions on such terms and conditions different from those specified in the Plan, including the terms of any award agreement or plan, adopted by the Company or any Subsidiary thereof to comply with, or take advantage of favorable tax or other treatment available under, the laws of any non-United States jurisdiction, as may in the judgment of the Administrator be necessary or desirable to foster and promote achievement of the purposes of the Plan and, in furtherance of such purposes the Administrator may make such modifications, amendments, procedures, subplans and the like as may be necessary or advisable to comply with provisions of laws in other countries or jurisdictions in which the Company or its Subsidiaries operates or has employees.

Section 17. Transfer of Awards.

No purported sale, assignment, mortgage, hypothecation, transfer, charge, pledge, encumbrance, gift, transfer in trust (voting or other) or other disposition of, or creation of a security interest in or lien on, any Award or any agreement or commitment to do any of the foregoing (each, a "*Transfer*") by any holder thereof in violation of the provisions of the Plan or an Award Agreement will be valid, except with the prior written consent of the Administrator, which consent may be granted or withheld in the sole discretion of the Administrator. Any purported Transfer of an Award or any economic benefit or interest therein in violation of the Plan or an Award Agreement shall be null and void *ab initio*, and shall not create any obligation or liability of the Company, and any person purportedly acquiring any Award or any economic benefit or interest therein transferred in violation of the Plan or an Award Agreement shall not be entitled to be recognized as a holder of such Shares. Unless otherwise determined by the Administrator in accordance with the provisions of the immediately preceding sentence, an Option may be exercised, during the lifetime of the Participant, only by the Participant or, during any period during which the Participant is under a legal disability, by the Participant's guardian or legal representative.

Section 18. Continued Employment.

The adoption of the Plan shall not confer upon any Eligible Recipient any right to continued employment or service with the Company or an Affiliate thereof, as the case may be, nor shall it interfere in any way with the right of the Company or an Affiliate thereof to terminate the employment or service of any of its Eligible Recipients at any time.

Section 19. Effective Date and Approval Date.

The Plan will be effective as of the date on which the Plan is approved by the Company's stockholders (the *"Effective Date"*) . The Plan will be unlimited in duration and, in the event of Plan termination, will remain in effect as long as any Shares awarded under it are outstanding and not fully vested; *provided, however*, that no Awards will be made under the Plan on or after the tenth anniversary of Effective Date.

Section 20. Code Section 409A.

The intent of the parties is that payments and benefits under the Plan comply with Code Section 409A to the extent subject thereto, and, accordingly, to the maximum extent permitted, the Plan shall be interpreted and be administered to be in compliance therewith. Any payments described in the Plan that are due within the "short-term deferral period" as defined in Code Section 409A shall not be treated as deferred compensation unless applicable law requires otherwise. Notwithstanding anything to the contrary in the Plan, to the extent required in order to avoid accelerated taxation and/or tax penalties under Code Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided upon a "separation from service" to a Participant who is a "specified employee" shall be paid on the first business day after the date that is six (6) months following the Participant's separation from service (or upon the Participant's death, if earlier). In addition, for purposes of the Plan, each amount to be paid or benefit to be provided to the Participant pursuant to the Plan, which constitute deferred compensation subject to Code Section 409A, shall be construed as a separate identified payment for purposes of Code Section 409A. Nothing contained in the Plan or an Award Agreement shall be construed as a guarantee of any particular tax effect with respect to an Award. The Company does not guarantee that any Awards provided under the Plan will satisfy the provisions of Code Section 409A, and in no event will the Company be liable for any or all portion of any taxes, penalties, interest or other expenses that may be incurred by a Participant on account of any non-compliance with Code Section 409A.

Section 21. Compensation Recovery Policy.

The Plan and all Awards issued hereunder shall be subject to any compensation recovery and/or recoupment policy adopted by the Company to comply with applicable law, including, without limitation, the Dodd-Frank Wall Street Reform and Consumer Protection Act, or to comport with good corporate governance practices, as such policies may be amended from time to time.

Section 22. Governing Law.

The Plan shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law of such state.

Section 23. Plan Document Controls.

The Plan and each Award Agreement constitute the entire agreement with respect to the subject matter hereof and thereof; *provided* that in the event of any inconsistency between the Plan and such Award Agreement, the terms and conditions of the Plan shall control.

Exhibit 16

November 21, 2018

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Commissioners:

We have read the statements made by Waitr Holdings Inc. (formerly known as Landcadia Holdings, Inc.) under Item 4.01 of its Form 8-K dated November 15, 2018. We agree with the statements concerning our Firm in such Form 8-K; we are not in a position to agree or disagree with other statements of Waitr Holdings Inc. (formerly known as Landcadia Holdings, Inc.) contained therein.

Very truly yours,

/s/ Marcum LLP

Marcum LLP

Exhibit 21.1

Subsidiaries of Waitr Holdings Inc.

Entity	Jurisdiction
Waitr Intermediate Holdings, LLC	Delaware
Waitr Inc.	Delaware

Exhibit 99.1

Waitr Incorporated

Condensed Consolidated Financial Statements as of September 30, 2018 and December 31, 2017 and for the three and nine months ended September 30, 2018 and 2017

Waitr Incorporated

Index to Unaudited Condensed Consolidated Financial Statements

Waitr Incorporated

Unaudited Condensed Consolidated Balance Sheets

(In thousands, except share and per share data)

	September 30, 2018	December 31, 2017
ASSETS	(Unaudited)	
CURRENT ASSETS:		
Cash	$ 2,842	$ 3,947
Accounts receivable, net of allowance for doubtful accounts of $131 at September 30, 2018 and $50 at December 31, 2017	3,508	2,124
Capitalized contract costs, current	1,591	947
Services receivable	623	-
Prepaid expenses and other current assets	2,631	363
TOTAL CURRENT ASSETS	**11,195**	**7,381**
Property and equipment, net	2,957	1,874
Capitalized contract costs, noncurrent	720	477
Goodwill	1,408	1,408
Intangible assets, net	285	243
Other noncurrent assets	144	24
TOTAL ASSETS	**$ 16,709**	**$ 11,407**
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable	$ 1,733	$ 247
Gratuities payable	841	372
Deferred revenue, current	2,947	1,630
Income tax payable	13	6
Accrued payroll	2,092	578
Accrued interest	652	156
Accrued professional fees	3,331	-
Short-term loan	1,310	-
Other current liabilities	1,920	177
TOTAL CURRENT LIABILITIES	**14,839**	**3,166**
Line of credit	3,600	-
Convertible notes, net	8,589	7,484
Bifurcated embedded derivatives on convertible notes	1	250
Accrued workers' compensation liability	1,405	1,250
Deferred revenue, noncurrent	1,300	728
Other noncurrent liabilities	573	39
TOTAL LIABILITIES	**30,307**	**12,917**
Commitments and contingencies (Note 8)		
STOCKHOLDERS' EQUITY (DEFICIT):		
Convertible Preferred Stock: Seed I, Par value of $0.00001 per share; 3,804,763 shares authorized, issued, and outstanding at September 30, 2018 and December 31, 2017	-	-
Convertible Preferred Stock: Seed II, Par Value of $0.00001 Per Share; 3,680,017 shares authorized, issued, and outstanding at September 30, 2018 and December 31, 2017	-	-
Convertible Preferred Stock: Seed AA, Par Value of $0.00001 per share; 8,171,138 shares authorized and 8,097,790 shares issued and outstanding at September 30, 2018 and December 31, 2017	-	-
Common Stock, par value of $0.00001 per share; 34,280,128 shares authorized and 11,309,434 shares issued and outstanding at September 30, 2018 and 11,203,023 shares issued and outstanding at December 31, 2017	-	-
Additional paid in capital	40,363	35,110
Accumulated deficit	(53,961)	(36,620)
TOTAL STOCKHOLDER'S EQUITY (DEFICIT)	**(13,598)**	**(1,510)**
TOTAL LIABILITIES AND STOCKHOLDER'S EQUITY (DEFICIT)	**$ 16,709**	**$ 11,407**

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

Waitr Incorporated

Unaudited Condensed Consolidated Statements of Operations

(In thousands, except share and per share data)

	Three months ended September 30,		Nine months ended September 30,	
	2018	2017	2018	2017
REVENUE	**$ 19,431**	**$ 5,885**	**$ 48,000**	**$ 14,333**
COSTS AND EXPENSES:				
Operations and support	11,934	4,887	30,348	11,749
Sales and marketing	3,850	1,294	8,989	3,728
Research and development	791	399	1,988	1,142
General and administrative	8,469	3,156	22,426	7,880
Depreciation and amortization	400	154	902	530
Related party expenses	28	16	76	39
Loss on disposal of assets	-	33	8	33
Impairment of intangible assets	-	-	-	576
TOTAL COSTS AND EXPENSES	**25,472**	**9,939**	**64,737**	**25,677**
LOSS FROM OPERATIONS	**(6,041)**	**(4,054)**	**(16,737)**	**(11,344)**
OTHER EXPENSES (INCOME) AND (GAIN), NET:				
Interest expense (income), net	440	67	901	66
Gain on derivative	(9)	(4)	(336)	(4)
Other expenses (income)	39	-	1	(33)
NET LOSS BEFORE INCOME TAXES	**(6,511)**	**(4,117)**	**(17,303)**	**(11,373)**
Income tax expense	4	3	38	5
NET LOSS	**$ (6,515)**	**$ (4,120)**	**$ (17,341)**	**$ (11,378)**
LOSS PER SHARE:				
Basic and diluted	$ (0.58)	$ (0.37)	$ (1.55)	$ (1.02)
Weighted average common shares outstanding - basic and diluted	11,309,308	11,150,767	11,219,053	11,120,644

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

Waitr Incorporated
Unaudited Condensed Consolidated Statements of Stockholders' Equity (Deficit)
(In thousands, except share data)

	Preferred Seed I		Preferred Seed II		Preferred Seed AA		Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity (deficit)
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balances at December 31, 2016	**3,804,763**	**$ -**	**3,680,017**	**$ -**	**5,720,637**	**$ -**	**10,800,000**	**$ -**	**$ 16,096**	**$ (9,713)**	**$ 6,383**
Net loss	-	-	-	-	-	-	-	-	-	(11,378)	(11,378)
Stock-based compensation	-	-	-	-	-	-	-	-	592	-	592
Equity issued in exchange for services	-	-	-	-	-	-	293,128	-	90	-	90
Exercise of stock options	-	-	-	-	-	-	38,958	-	2	-	2
Conversion of convertible Notes to Preferred Seed AA stock					35,676				22		22
Issuance of stock					2,341,477				7,224		7,224
Balances at September 30, 2017	**3,804,763**	**$ -**	**3,680,017**	**$ -**	**8,097,790**	**$ -**	**11,132,086**	**$ -**	**$ 24,026**	**$ (21,091)**	**$ 2,935**

	Preferred Seed I		Preferred Seed II		Preferred Seed AA		Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity (deficit)
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balances at December 31, 2017	**3,804,763**	**$ -**	**3,680,017**	**$ -**	**8,097,790**	**$ -**	**11,203,023**	**$ -**	**$ 35,110**	**$ (36,620)**	**$ (1,510)**
Net loss	-	-	-	-	-	-	-	-	-	(17,341)	(17,341)
Stock-based compensation	-	-	-	-	-	-	-	-	2,831	-	2,831
Equity issued in exchange for services	-	-	-	-	-	-	-	-	90	-	90
Stock issued as consideration in GoGoGrocer asset acquisition	-	-	-	-	-	-	18,182	-	142		142
Exercise of stock options	-	-	-	-	-	-	235,476	-	11	-	11
Cancellation of stock	-	-	-	-	-	-	(147,247)	-	-	-	-
Equity compensation on Requested Amendment	-	-	-	-	-	-	-	-	650	-	650
Discount on convertible notes due to beneficial conversion feature	-	-	-	-	-	-	-	-	1,529	-	1,529
Balances at September 30, 2018	**3,804,763**	**$ -**	**3,680,017**	**$ -**	**8,097,790**	**$ -**	**11,309,434**	**$ -**	**$ 40,363**	**$ (53,961)**	**$ (13,598)**

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

Waitr Incorporated
Unaudited Condensed Consolidated Statements of Cash Flows
(In thousands, unless otherwise noted)

	Nine months ended September 30,	
	2018	**2017**
Cash flows from operating activities:		
Net loss	$ (17,341)	$ (11,378)
Adjustments to reconcile net loss to net cash used in operating activities:		
Non-cash interest expense on convertible notes	252	46
Non-cash advertising expense	377	-
Stock-based compensation	2,831	592
Equity issued in exchange for services	90	90
Equity compensation on Requested Amendment	650	-
Loss on disposal of assets	8	33
Depreciation and amortization	902	530
Impairment of intangible assets	-	576
Amortization of capitalized contract costs	1,023	378
Gain on derivatives	(336)	4
Other non-cash expense	74	-
Changes in assets and liabilities:		
Accounts receivable	(1,384)	(892)
Capitalized contract costs	(1,910)	(1,018)
Prepaid expenses and other current assets	(2,268)	(466)
Payments on lease deposits	(33)	(3)
Accounts payable	1,486	134
Gratuities payable	469	143
Deferred revenue	1,889	1,019
Income tax payable	7	5
Accrued payroll	1,514	929
Accrued interest	496	20
Accrued workers' compensation liability	155	-
Accrued professional fees	3,331	-
Other current liabilities	1,743	9
Other noncurrent liabilities	(14)	40
Net cash used in operating activities	**(5,989)**	**(9,209)**
Cash flows from investing activities:		
Purchases of property and equipment	(1,836)	(1,077)
Internally developed software	-	(46)
Consideration paid for IndiePlate asset acquisition	(11)	-
Net cash used in investing activities	**(1,847)**	**(1,123)**
Cash flows from financing activities:		
Proceeds from line of credit	4,000	-
Proceeds from convertible notes issuance	1,410	4,524
Proceeds of receivable from stockholder	-	200
Proceeds from short-term loan	2,172	-
Payments on short-term loan	(862)	-
Payments on financing arrangement	-	1
Proceeds from exercise of stock options	11	2
Proceeds from issuance of stock	-	7,224
Net cash provided by financing activities	**6,731**	**11,951**
Net change in cash	**(1,105)**	**1,619**
Cash at the beginning of the period	3,947	3,285
Cash at the end of the period	**$ 2,842**	**$ 4,904**
Supplemental disclosures of cash flow information:		
Cash paid during the period for interest	$ (88)	$ -
Cash paid during the period for state income taxes	(31)	5
Supplemental disclosures of noncash financing activities:		
Services receivable	1,000	-
Debt assumed in IndiePlate asset acquisition	(60)	-
Bifurcated embedded derivative	87	-
Discount on convertible notes due to beneficial conversion feature	1,529	815
Non cash consideration in GoGoGrocer asset acquisition	(142)	-
Conversion of convertible notes to preferred stock	-	22

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

1. Organization

Waitr Incorporated (the "Company") is a leading restaurant platform for online food ordering and delivery services in the Southeastern United States. The Company was incorporated on December 5, 2013 and is headquartered in Lake Charles, Louisiana. The Company partners with independent local restaurants and regional and national chains in small and mid-size markets (herein referred to as "Restaurant Partners").

The Company provides an online platform for consumers to order food from Restaurant Partners for pick-up and delivery through a network of drivers. Use of the Company's restaurant platform benefits the consumer by providing a single location to browse local restaurants and menus, track order and delivery status, and securely store previous orders and payment information for ease of use and convenience. Restaurant Partners benefit from the online platform through increased exposure to consumers for carryout sales and expanded business in the delivery market. The Company also provides Restaurant Partners with high-quality, professional photographs of their menu offerings as part of its overall services.

2. Basis of Presentation and Summary of Significant Accounting Policies

Unaudited Interim Financial Statements

These unaudited interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and accompanying notes for each of the three years ended December 31, 2017, 2016, and 2015.

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") and with instructions to Form 10-Q and Rule 10-01 of Securities and Exchange Commission ("SEC") Regulation S-X as they apply to interim financial information. Accordingly, the interim condensed consolidated financial statements do not include all of the information and notes required by U.S. GAAP for complete annual financial statements, although the Company believes that the disclosures made are adequate to make the information not misleading.

The interim condensed consolidated financial statements are unaudited, but in the Company's opinion include all adjustments that are necessary for a fair statement of results for the periods presented. The interim financial results are not necessarily indicative of results that may be expected for any other interim period or the fiscal year.

Principles of Consolidation

The condensed consolidated balance sheets as of September 30, 2018 and December 31, 2017, the condensed consolidated statements of operations for the three and nine months ended September 30, 2018 and 2017, and the condensed consolidated statements of stockholders' equity and cash flows for the nine months ended September 30, 2018 and 2017 include the accounts of the Company and its wholly-owned subsidiary, Requested, Inc. ("Requested"), a software and platform developer. Intercompany transactions and balances have been eliminated upon consolidation.

Use of Estimates

The preparation of the condensed consolidated financial statements in accordance with U.S. GAAP requires the Company to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes.

Significant estimates and judgments relied upon in preparing these condensed consolidated financial statements include the determination of the nature and timing of satisfaction of revenue-generating performance obligations and the standalone selling price of performance obligations, variable consideration, allowance for doubtful accounts, income taxes, useful lives of tangible and intangible assets, depreciation and amortization, equity-based compensation, contingencies, goodwill and other intangible assets, and fair values of assets acquired and liabilities assumed as part of a business combination. The Company regularly assesses these estimates and records changes to estimates in the period in which they become known. The Company bases its estimates on historical experience and various other assumptions believed to be reasonable under the circumstances. Changes in the economic environment, financial markets, and any other parameter used in determining these estimates could cause actual results to differ from those estimates.

Revenue

Substantially all of the Company's revenue is comprised of revenue from contracts with Restaurant Partners. Revenue for the three and nine months ended September 30, 2018 and 2017 is as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2018	2017	2018	2017
Transaction fees	$ 18,466	$ 5,488	$ 45,696	$ 13,280
Setup and integration fees	820	337	1,955	826
Other	145	61	349	227
Total revenue	**$ 19,431**	**$ 5,886**	**$ 48,000**	**$ 14,333**

Transaction fees represent the revenue recognized from the Company's obligation to process orders on the platform. The performance obligation is satisfied when the Company successfully processes an order placed on the platform and the restaurant receives the order at their location. Orders that include delivery contain an additional performance obligation that is satisfied at the point the order is delivered to the diner's location. The obligation to process orders on the platform represents a series of distinct performance obligations satisfied over time that the Company combines into a single performance obligation. Consistent with the recognition objective in ASC Topic 606, *Revenue from Contracts with Customers* ("ASC 606"), the variable consideration due to the Company for processing orders is recognized on a daily basis. As an agent of the restaurant in the transaction, the Company recognizes transaction fees earned from the restaurant on the platform on a net basis. Transaction fees are collected by a third party payment processor and remitted to the Company shortly after the order is processed, which is typically three days. Transaction fees also include a fee charged to the end user customer when they request the order be delivered to their location. Revenue is recognized for delivery fees once the delivery service is completed. The contract period for substantially all restaurant contracts is one month as both the Company and the Restaurant Partner have the ability to unilaterally terminate the contract by providing notice of termination.

The Company also receives nonrefundable upfront setup and integration fees for onboarding new restaurants onto the platform. Setup and integration activities primarily represent administrative activities that allow the Company to fulfill future performance obligations for its Restaurant Partners and do not represent services transferred to the customer. However, the nonrefundable upfront setup and integration fees charged to Restaurant Partners result in a performance obligation, in the form of a material right, related to the Restaurant Partner's option to renew the contract each day rather than provide a notice of termination. Upfront nonrefundable fees are generally due shortly after the contract is executed; however, the Company may provide installment payment options for up to six months. Revenue is recognized ratably over a two-year period, at which point Restaurant Partners must make another nonrefundable payment to renew the contract.

Other revenues primarily consist of fees from Restaurant Partners for social media promotions, as well as subscription revenues from those who have opted to pay an ongoing monthly fee instead of a lump sum setup fee, to remain on the platform.

Significant Judgement

Most of the Company's contracts with Restaurant Partners contain multiple performance obligations as described above. For these contracts, the Company accounts for individual performance obligations separately if they are both capable of being distinct and distinct in the context of the contract. Determining whether products and services are considered distinct performance obligations that should be accounted for separately may require significant judgment.

Judgment is also required to determine the standalone selling price for each distinct performance obligation. The Company uses the alternative approach in ASC 606 to allocate the upfront fee between the material right obligation and the transaction fee obligation, which results in all of the upfront nonrefundable payment at inception of the contract being allocated to the material right obligation. When contracts with customers include other performance obligations, such as ancillary equipment, the Company establishes a single amount to estimate the standalone selling price for the goods or services. In instances where the standalone selling price is not directly observable, it is determined using observable inputs.

Contract Balances

The timing of revenue recognition may differ from the timing of invoicing to customers. The Company records a receivable when it has an unconditional right to the consideration. Setup and integration fees are due at inception of the contract; in certain cases, extended payment terms may be provided for up to six months and are included in accounts receivable. The opening balance of accounts receivable, net was $2,124 and $762 as of January 1, 2018 and 2017, respectively.

Payment terms and conditions on setup and integration fees vary by contract type, although terms typically include a requirement of payment within six months. The Company records a contract liability in deferred revenue for the unearned portion of the upfront nonrefundable fee. In instances where the timing of revenue recognition differs from the timing of invoicing, the Company has determined its contracts generally do not include a significant financing component.

Assets Recognized from Costs to Obtain and Costs to Fulfill a Contract with a Customer

The Company recognizes an asset for the incremental costs of obtaining a contract with a customer and recognizes the expense over the course of the period when the Company expects to recover those costs. The Company has determined that certain internal sales incentives earned at the time when an initial contract is executed meet these requirements. Capitalized sales incentives are amortized on a straight-line basis over the period of benefit, which the Company has determined to be two years. Deferred costs related to obtaining a contract with a customer were $858 and $398 as of September 30, 2018 and 2017, respectively, of which $582 and $266, respectively, were classified as current. Amortization expense for the costs to obtain a contract were approximately $148 and $58 for the three months ended September 30, 2018 and 2017, respectively, and $364 and $135 for the nine months ended September 30, 2018 and 2017, respectively.

The Company also recognizes an asset for the costs to fulfill a contract with a customer when they are specifically identifiable, generate or enhance resources used to satisfy future performance obligations, and are expected to be recovered. The Company has determined that certain costs related to setup and integration activities meet the capitalization criteria under ASC Topic 340-40, *Other Assets and Deferred Costs*. Costs related to these implementation activities are deferred and then amortized on a straight-line basis over a period of benefit, which the Company has determined to be two years. Deferred costs related to fulfilling a contract with a customer were $1,453 and $758 as of September 30, 2018 and 2017, respectively, out of which $1,009 and $458, respectively, were classified as current. Amortization expense for the costs to fulfill a contract were approximately $263 and $107 for the three months ended September 30, 2018 and 2017, respectively, and $659 and $243 for the nine months ended September 30, 2018 and 2017, respectively.

The Company applies a practical expedient to expense costs as incurred for costs to obtain a contract with a customer when the amortization period would have been one year or less.

There was no impairment loss in relation to capitalized costs for the periods presented.

Recently Adopted Accounting Pronouncements

Changes to U.S. GAAP are established by the Financial Accounting Standards Board ("FASB"), in the form of Accounting Standards Updates ("ASUs"), to the FASB's Accounting Standards Codification ("ASC").

In March 2018, the FASB issued ASU No. 2018-05, *Income Taxes (Topic 740)* ("ASU 2018-05") providing amendments to SEC paragraphs pursuant to SEC Staff Accounting Bulletin No. 118. The ASU became effective upon issuance and included guidance and clarification of income tax accounting to address uncertainty or diversity of views in practice regarding the application of ASC 2018-05 in situations where a registrant does not have the necessary information available, prepared, or analyzed in reasonable detail to complete the accounting under the Tax Cuts and Jobs Act of 2017 ("Tax Act"), for the reporting period in which the Tax Act was enacted. The adoption did not have an immediate impact on the condensed consolidated financial statements.

In February 2018, the FASB issued ASU No. 2018-02, *Income Statement - Reporting Comprehensive Income: Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income* ("ASU 2018-02"), which permits the reclassification of disproportionate tax effects in accumulated other comprehensive income caused by the Tax Act to retained earnings. ASU 2018-02 will become effective for interim and annual reporting periods beginning on January 1, 2019. Early adoption of the ASU is permitted. The Company has elected to early adopt the ASU effective January 1, 2018 and will prospectively classify the income tax effects of the Tax Act to retained earnings. As the Company does not have accumulated other comprehensive income, the adoption has no immediate impact on the condensed consolidated financial statements.

In May 2017, the FASB issued ASU No. 2017-09, *Compensation – Stock Compensation (Topic 718): Scope of Modification Accounting* ("ASU 2017-09"). ASU 2017-09 provides guidance about which changes to the terms or conditions of a stock-based payment award require an entity to apply modification accounting. ASU 2017-09 is effective for all entities for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. Early adoption is permitted, including adoption in any interim period for which financial statements have not yet been issued or made available for issuance. The Company has adopted ASU 2017-09 as of January 1, 2018 and the Company will apply the guidance to any awards modified on or after the adoption date. The adoption did not have an immediate impact on the condensed consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-01, *Business Combinations: Clarifying the Definition of a Business (Topic 805)* ("ASU 2017-01"). ASU 2017-01 clarifies the definition of a business and provides guidance on evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or as business combinations. The definition clarification outlined in this ASU affects many areas of accounting including acquisitions, disposals, goodwill, and consolidation. ASU 2017-01 is effective for public business entities for periods beginning after December 15, 2017, including interim periods within those periods. For all other entities, the standard is effective for annual periods beginning after December 15, 2018 and interim periods within annual periods beginning after December 15, 2019. Early adoption is permitted. The Company has elected to early adopt ASU 2017-01 as of January 1, 2018 and will apply the standard for business combinations consummated subsequent to the date of adoption. The adoption did not have an immediate impact on the condensed consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017--04, *Intangibles, Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment* ("ASU 2017-04"), which eliminates Step 2 of the goodwill impairment test that had required a hypothetical purchase price allocation. Rather, entities should apply the same impairment assessment to all reporting units and recognize an impairment loss for the amount by which a reporting unit's carrying amount exceeds its fair value without exceeding the total amount of goodwill allocated to that reporting unit. Entities will continue to have the option to perform a qualitative assessment for a reporting unit to determine if the quantitative impairment test is necessary. ASU 2017--04 is effective for public business entities that are SEC filers for their annual or any interim goodwill impairment tests in fiscal years beginning after December 15, 2019. For a public business entity that is not an SEC filer, the standard is effective in fiscal years beginning after December 15, 2020. For all other entities, the standard is effective in fiscal years beginning after December 15, 2021. Early adoption is permitted for interim or annual goodwill impairment tests performed on testing dates after January 1, 2017. The Company early adopted this standard on January 1, 2018. The adoption of this standard did not have an immediate impact on the condensed consolidated financial statements.

Recently Issued Accounting Pronouncements

The Company considered the applicability and impact of all recently issued ASUs. ASUs not listed below were assessed and determined to be either not applicable or are expected to have minimal impact on the condensed consolidated financial statements.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation-Stock Compensation (Topic 718)* ("ASU 2018-07") to simplify the accounting for stock-based payments to non-employees by aligning it with the accounting for stock-based payments to employees, with certain exceptions. Under the new standard, equity-classified non-employee awards will be initially measured on the grant date and re-measured only upon modification, rather than at each reporting period. Measurement will be based on an estimate of the fair value of the equity instruments to be issued. ASU 2018-07 is effective for public business entities in fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. For all other entities, the standard is effective in fiscal years beginning after December 15, 2019 and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted, including in an interim period for which financial statements have not been issued or made available for issuance, but not before an entity adopts ASC 606. The Company's adoption of this ASU will not have a material impact on the condensed consolidated financial statements.

In July 2017, the FASB issued ASU No. 2017-11, *Earnings Per Share (Topic 260), Distinguishing Liabilities from Equity (Topic 480) and Derivatives and Hedging (Topic 815): I. Accounting for Certain Financial Instruments with Down Round Features; II. Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception* ("ASU 2017-11"). Part I of ASU 2017-11 addresses the complexity of accounting for certain financial instruments with down round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced based on the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. Part II of ASU 2017-11 addresses the difficulty of navigating ASC Topic 480, *Distinguishing Liabilities from Equity* ("ASC 480") because of the existence of extensive pending content in ASC 480. This pending content is the result of the indefinite deferral of accounting requirements about mandatorily redeemable financial instruments of certain nonpublic entities and certain mandatorily redeemable noncontrolling interests. Part II of ASU 2017-11 does not have an accounting effect. ASU 2017-11 is effective for public business entities for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. For all other entities, the standard is effective for fiscal years beginning after December 15, 2019 and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted. The Company is currently evaluating the impact that adopting this ASU will have on the condensed consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments,* ("ASU 2016-13") to replace the incurred loss impairment methodology under current U.S. GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The Company will be required to use a forward-looking expected credit loss model for accounts receivables, loans, and other financial instruments. ASU 2016-13 is effective for public business entities for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. For all other entities, the standard is effective for fiscal years beginning after December 15, 2020, including interim periods within fiscal years beginning after December 15, 2021. Early adoption is permitted for all entities beginning after December 15, 2018, including interim periods within those fiscal years. The Company is currently evaluating the impact that adopting this ASU will have on the condensed consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)* ("ASU 2016-02"). ASU 2016-02 increases transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. ASU 2016-02 is effective for public business entities for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. For all other entities, the standard is effective for fiscal years beginning after December 15, 2019 and interim periods beginning after December 15, 2020. Early adoption is permitted. The Company is currently evaluating the impact that adopting this ASU will have on the condensed consolidated financial statements.

3. Intangible Assets

Intangible assets with finite useful lives are amortized using the straight-line method over their useful lives and include internally developed software, as well as software to be otherwise marketed. These intangible assets are reviewed for impairment whenever events or circumstances indicate that they may not be recoverable. The Company has determined that its trademark intangible asset is an indefinite-lived asset and therefore is not subject to amortization but is evaluated annually for impairment.

In 2017, the Company ceased the operations of Requested due to a change in corporate strategy. The legal entity is not yet dissolved and the closure of the operations of Requested did not meet the criteria to be reported as discontinued operations in accordance with ASC Topic 205-20, *Presentation of Financial Statements – Discontinued Operations* ("ASC 205-20"). The Company concluded that the carrying value of the acquired technology was not recoverable and recorded a $551 impairment charge during the three month period ended June 30, 2017.

Additionally, the Company recorded an impairment charge of $25 related to software code that was determined to be impaired during the three month period ended March 31, 2017.

4. Debt

The Company's outstanding debt obligations are as follows (in thousands):

	September 30, 2018	December 31, 2017
Series 2017 Convertible Promissory Notes, par	$ 7,484	$ 7,484
Series 2018 Convertible Promissory Notes, par	2,470	-
Line of Credit	4,000	-
	$ 13,954	$ 7,484
Less: discount on convertible notes	(1,365)	
Less: discount on line of credit	(400)	-
Total long-term debt	**$ 12,189**	**$ 7,484**
Short-term loan	$ 1,310	$ -
Total outstanding debt	**$ 13,499**	**$ 7,484**

Maturities of outstanding debt, net of discount are as follows (in thousands):

	Debt maturity
2019	$ 8,794
2020	4,705
Total debt	**$ 13,499**

Series 2017 Convertible Promissory Notes

Between August 24, 2017 and December 14, 2017, the Company issued a series of convertible promissory notes ("Series 2017 Notes") to various investors with a maturity date of 24 months from the date of issuance with an aggregate principal amount of $7,484. The notes accrue interest at a rate of 8% per annum and is due and payable at maturity, unless otherwise converted prior to maturity. The original terms of the Series 2017 Notes provided for the principal and accrued interest to automatically settle into the type of stock issued in the next financing with proceeds in excess of $2,000 at a per share conversion price equal to the lesser of (i) 80% of the price paid by investors in the next qualified financing and (ii) $125,000 divided by the number of common stock outstanding on a fully diluted basis. As the share settlement price is subject to variability, the number of shares the Company may be required to deliver upon conversion in a subsequent financing was indeterminable at the date of issuance of the Series 2017 Notes.

Upon the occurrence of a sale of the Company, each holder may elect to redeem their Series 2017 Notes at a price equal to 1.5 multiplied by par plus accrued interest. The Company determined that the feature providing for share-settled redemption in the next financing at a stated discount, and the ability for holders to redeem their notes at a substantial premium, represent an embedded derivative, which requires separate accounting recognition in accordance with subtopic ASC 815-15. The fair value on the date of issuance was recorded as bifurcated embedded derivatives on convertible notes with an offset to the discount on the convertible note.

On December 15, 2017, the Company amended the Series 2017 Notes to add a substantive conversion feature, allowing the holders the right to convert par plus accrued interest into Series AA Preferred Stock, at a per share conversion price equal to $125,000 divided by the number of common stock outstanding, on a fully diluted basis, at maturity. The amendments were deemed substantial and resulted in the application of extinguishment accounting. The Company recorded a loss on debt extinguishment of $10,537 as of December 15, 2017 based on the difference between the fair value of the amended notes of $18,308 and the carrying amount of the original Series 2017 Notes of $7,771. In accordance with ASC 470-20, the Company recorded a premium to additional paid in capital for the excess of the fair value of the amended notes over the sum of (i) par, (ii) accrued interest, and (iii) the bifurcated embedded derivatives on convertible notes, or $10,444, as of December 15, 2017.

The amended Series 2017 Notes (the "Amended Series 2017 Notes") mature on December 15, 2019 and have an aggregate principal amount of $7,484. Except as described in the next sentence, the terms of the Amended Series 2017 Notes were unchanged from those of the original Series 2017 Notes. The December 15, 2017 amendment (i) extended the maturity date to December 15, 2019, (ii) added a feature stating that upon the occurrence of a sale of the Company, each holder may elect to either to redeem their Amended Series 2017 Notes at a price equal to 1.5 multiplied by par plus accrued interest, or may convert par plus accrued interest into Series AA Preferred Stock at a per share conversion price equal to $125,000 divided by the number of common shares outstanding on a fully diluted basis, and (iii) added a feature stating that if not previously converted or redeemed upon the occurrence of a company sale, each holder is entitled to convert par plus accrued interest on the maturity date of their notes into Series AA Preferred Stock at a per share conversion price equal to $125,000 divided by the number of common shares outstanding on a fully diluted basis.

Series 2018 Convertible Promissory Notes

Between March 2, 2018 and March 15, 2018, the Company issued a series of convertible promissory notes ("Series 2018 Notes") to various investors with a maturity date of 24 months from the date of issuance with an aggregate principal amount of $2,470, of which $1,410 was received in cash, $1,000 in advertising services receivable, and $60 is debt assumed in the IndiePlate LLC asset acquisition (see Note 11 – Asset Acquisition).

The Series 2018 Notes accrue interest at a rate of 8% per annum that is due and payable at maturity, unless otherwise converted prior to maturity. The terms of the Series 2018 Notes provide for the principal and accrued interest to automatically convert into the class of stock issued in the next financing with proceeds in excess of $2,000 at a per share conversion price equal to the lesser of (i) 80% of the price paid by investors in the next qualified financing or (ii) $125,000 divided by the number of common shares outstanding, on a fully diluted basis. As the conversion price is subject to variability, the number of shares the Company may be required to deliver upon conversion in a subsequent financing was indeterminable at the date of issuance of the Series 2018 Notes.

Upon the occurrence of a sale of the Company, each holder may elect to either redeem their Series 2018 Notes at a price equal to 1.5 multiplied by par plus accrued interest, or may convert par plus accrued interest into Series AA Preferred Stock at a per share conversion price equal to $125,000 divided by the number of common stock outstanding, on a fully diluted basis. If not previously converted or redeemed upon the occurrence of a Company sale, each holder is entitled to convert par plus accrued interest on the maturity date of their notes into Series AA Preferred Stock at a per share conversion price equal to $125,000 divided by the number of common stock outstanding, on a fully diluted basis.

The Company determined that the feature providing for conversion into shares sold in the next financing at a stated discount, and the ability for holders to redeem their notes at a substantial premium, represent an embedded derivative requiring separate accounting recognition in accordance with subtopic ASC 815. The fair value on the date of issuance was recorded as bifurcated embedded derivatives on convertible notes, with an offset to the discount on the convertible note payable.

Line of credit

On July 2, 2018, the Company entered into a loan agreement with a group of lenders for an unsecured line of credit. The group of lenders consists of certain stockholders and affiliates of stockholders of the Company. The loan's maximum principal amount is $5,000 and carries an annual simple interest rate of 12.5% due on maturity, with interest paid quarterly on September 30, December 31, March 31 and June 30 of each year. In connection with advances made under the loan agreement, the Company is required to issue warrants to the lenders (the "Line of Credit Warrants"), providing the lenders the right to purchase a number of common shares of the Company equal to the principal amount multiplied by 6.75% and divided by the Exercise Price. The Exercise Price of the Line of Credit Warrants, as defined by the loan agreement, is either (1) $8.022, in the event that the closing takes place under the Agreement and Plan of Merger by and among Landcadia Holdings, Inc. and Landcadia Merger Sub, Inc. and the Company, or (2) the price that is eighty percent of the price per share of the Company's equity securities issued in the next preferred equity financing of at least $10,000. The loan agreement carries certain covenants, among which is the inability of the Company to pay dividends or distributions of any kind to its stockholders or incur additional debt, beyond payables and liabilities incurred in the ordinary course of business and $200 of credit card debt. The loan matures on the earlier of the sale of the Company or July 1, 2020.

As of September 30, 2018, the Company borrowed $4,000 on the line of credit. As a result of entering into and borrowing upon the line of credit, the Company incurred an origination fee of $500, payable upon maturity; the liability for which was included within other noncurrent liabilities as of September 30, 2018. The portion of the origination fee applicable to the $4,000 advanced was recorded as debt issuance costs and reflected as a discount to the line of credit. The origination fee applicable to the undrawn $1,000 was recorded as deferred debt issuance costs and is being amortized to interest expense over the term of the loan agreement. As of September 30, 2018, the unamortized deferred debt issuance costs were $88 and were reflected within other noncurrent assets. The Company estimates that 33,658 Line of Credit Warrants will be issued in connection with the $4,000 advanced (assuming an Exercise Price of $8.022). These Line of Credit Warrants were recorded at their estimated fair value, with changes in the estimated fair value of expected to be reported through earnings. As of September 30, 2018, the carrying value of the Line of Credit Warrants was $33 and was included in other noncurrent liabilities.

Short-term loan

On June 4, 2018, the Company entered into a loan agreement with First Insurance Funding to finance a portion of its annual insurance premium obligation. The principal amount of the loan is $2,172, payable in monthly installments, until maturity. The loan matures on March 21, 2019 and carries an annual interest rate of 3.39%.

5. Derivatives

As described in *Note 4 – Debt*, the Company identified certain embedded derivatives related to contingent requirements to repay its indebtedness at a substantial premium to par. These embedded derivatives are carried on the accompanying consolidated balance sheets as bifurcated embedded derivatives on convertible notes at estimated fair value. Changes in the estimated fair value of the derivatives are reported as gain/loss on derivatives in the accompanying condensed consolidated statements of operations. The embedded derivatives are not designed as hedging instruments.

The amounts recorded in the condensed consolidated balance sheets for derivatives not designated as hedging instruments are as follows (in thousands):

	September 30, 2018	December 31, 2017
Bifurcated embedded derivatives on convertible notes	$ 1	$ 250

The amount of gains recognized in the condensed consolidated statements of operations on derivatives not designated as hedging instruments are as follows (in thousands):

	Three months ended September 30,	
	2018	2017
Gain on derivatives	$ 9	$ 4

	Nine months ended September 30,	
	2018	2017
Gain on derivatives	$ 336	$ 4

6. Deferred Revenue

Deferred revenue is comprised of unearned setup and integration fees. The Company's opening deferred revenue balance was $2,358 and $909 as of January 1, 2018 and 2017, respectively. The Company recognized $811 and $337 of setup and integration revenues during the three months ended September 30, 2018 and 2017, respectively, and $1,979 and $826 for the nine months ended September 30, 2018 and 2017, respectively, which was included in the deferred revenue balances at the beginning of the respective periods.

Transaction Price Allocated to the Remaining Performance Obligations

As of September 30, 2018, $4,247 of revenue is expected to be recognized from remaining performance obligations for setup and integration fees. The Company expects to recognize revenue on $2,947 on these remaining performance obligations over the next 12 months, with the balance recognized in the subsequent 12 months.

7. Income Taxes

The Company applies an estimated annual effective tax rate approach for calculating its tax provision for interim periods, as required under U.S. GAAP. The Company recorded income tax expense of $4 and $3 for the three months ended September 30, 2018 and 2017, respectively and $38 and $5 for the nine months ended September 30, 2018 and 2017, respectively. The Company has historically generated net operating losses; therefore, a valuation allowance has been recorded on the Company's net deferred tax assets. The Company's income tax expense is entirely related to taxes required on gross margins in Texas.

8. Commitments and Contingencies

Workers' Compensation Claim

On November 27, 2017, Guarantee Insurance Company ("GIC"), the Company's former workers' compensation insurer, was ordered into receivership for purposes of liquidation by the Second Judicial Circuit Court in Leon County, Florida. At the time of the court order, GIC was administering the Company's outstanding workers' compensation claims. Upon entering receivership, the guaranty associations of the states where GIC operated began reviewing outstanding claims administered by GIC for continued claim coverage eligibility based on guaranty associations' eligibility criteria. The Company's net worth exceeded the threshold of $25,000 established by the Louisiana Insurance Guaranty Association ("LIGA") when determining eligibility for claims coverage. As such, LIGA assessed the Company's outstanding claim as ineligible for coverage. As of September 30, 2018 and December 31, 2017, the Company had $1,404 and $1,250, respectively, in workers' compensation liabilities. The Company recorded an additional general and administrative expense of $157 related to the liability during the three and nine months ended September 30, 2018 and no expense during the three and nine months ended September 30, 2017.

Legal Matters

From time to time, the Company may be involved in certain legal proceedings, inquiries, claims, and disputes that arise in the ordinary course of business. Although the Company cannot predict the outcomes of these matters, the Company does not believe these actions will have a material adverse effect on the Company's condensed consolidated financial statements.

Landcadia Merger

On May 16, 2018, the Company entered into a merger agreement with Landcadia Merger Sub, Inc., a wholly-owned subsidiary of Landcadia Holdings, Inc. (together, "Landcadia"). The aggregate consideration for the proposed business combination will be approximately $300,000 payable in the form of (1) cash (subject to a minimum of $50,000 and a maximum of $75,000) and (2) shares of Landcadia's common stock (subject to a minimum of 22,500,000 shares and a maximum of 25,000,000 shares) valued at approximately $10.00 per share, plus approximately $8,000 payable in the form of Landcadia's stock options to be issued to holders of options to purchase the Company's stock that are unvested, outstanding, and unexercised as of immediately prior to the effective time of the proposed business combination. The final value of aggregate consideration will be dependent on the amount of actual cash consideration transferred and the closing date value of the actual number of shares issued. Upon the closing of the merger, the Company's outstanding debt would be converted into common stock. During the three and nine months ended September 30, 2018, the Company had incurred approximately $1,870 and $5,473, respectively, of expenses related to the merger, which are recorded in the general and administrative line item on the condensed consolidated statements of operations. As of September 30, 2018, $3,331 of such costs were reflected as accrued professional fees on the condensed consolidated balance sheets.

9. Fair Value Measurement

The Company records the fair value of assets and liabilities in accordance with ASC Topic 820, *Fair Value Measurement* ("ASC 820"). ASC 820 defines fair value as the price received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and in the principal or most advantageous market for that asset or liability. The fair value should be calculated based on assumptions that market participants would use in pricing the asset or liability, not on assumptions specific to the entity.

In addition to defining fair value, ASC 820 establishes a fair value hierarchy for valuation inputs. The hierarchy prioritizes the inputs into three levels based on the extent to which inputs used in measuring fair value are observable in the market. Each fair value measurement is reported in one of the three levels, which is determined by the lowest level input that is significant to the fair value measurement in its entirety. These levels are:

Level 1 - Quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2 - Quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument.

Level 3 - Unobservable inputs reflecting the Company's own assumptions about the inputs used in pricing the asset or liability at fair value.

Certain financial instruments are required to be recorded at fair value. Other financial instruments, including cash, are recorded at cost, which approximates fair value. Additionally, accounts receivable, accounts payable, and accrued expenses approximate fair value because of the short-term nature of these financial instruments.

The following tables present carrying amounts and estimated fair values of the Company's financial instruments on a recurring basis as of September 30, 2018 and December 31, 2017 (in thousands):

	September 30, 2018			
	Carrying Amount	Fair Value		
		Level 1	Level 2	Level 3
Bifurcated embedded derivatives on convertible notes	$ 1	$ -	$ -	$ 1
Line of Credit Warrants (Other noncurrent liabilities)	33			33
	$ 34	**$ -**	**$ -**	**$ 34**

	December 31, 2017			
	Carrying Amount	Fair Value		
		Level 1	Level 2	Level 3
Bifurcated embedded derivatives on convertible notes	$ 250	$ -	$ -	$ 250
	$ 250	**$ -**	**$ -**	**$ 250**

The Company determined the fair value of bifurcated embedded derivatives on convertible notes and the Line of Credit Warrants using Level 3 inputs, including expected maturity or conversion date, discount rate, and exercise or strike price. Strike price on the bifurcated embedded derivatives is based on the estimated next financing round price as of the respective valuation date and the contractual terms of the notes, whereby the conversion price is the lower of (i) 80.0% of the next financing round price or (ii) a value based on a contractually-specified value divided by fully diluted stock. Exercise price on the Line of Credit Warrants is based on the contractual terms of the warrants, whereby the exercise price is either (1) $8.022, in the event that the closing takes place under the Agreement and Plan of Merger by and among Landcadia Holdings, Inc. and Landcadia Merger Sub, Inc. and the Company, or (2) the price that is eighty percent of the price per share of the Company's equity securities issued in the next preferred equity financing of at least $10,000.

Significant increases (decreases) in the discount rate or the forecasted financial information would have resulted in different fair value measurements for the embedded features. For all significant unobservable inputs used in the fair value measurement of the Level 3 liabilities, a change in one of the inputs would not necessarily result in a directionally similar change in another.

There have been no transfers between levels during the periods presented in the accompanying condensed consolidated financial statements. The beginning and ending balances of net assets and liabilities classified as Level 3, for which a reconciliation is required, are as follows (in thousands):

	September 30, 2018	December 31, 2017
Balance, beginning of the period	$ 250	$ -
Increases / additions	33	250
Reductions / settlements	(249)	-
Balance, end of the period	**$ 34**	**$ 250**

10. Stock-Based Compensation

Effective June 2017, the Company's stockholders voted to amend the terms of its 2014 Stock Plan (the "Plan"). The Amended 2014 Stock Plan (the "Amended 2014 Plan") provides a maximum aggregate amount of 5,870,000 shares of the common stock of the Company with respect to which options may be granted and provides for grants of incentive stock options and non-qualified stock options.

Total compensation expense related to the Company's stock-based expense plans was $869 and $365 for the three months ended September 30, 2018 and 2017, respectively and $2,831 and $592 for the nine months ended September 30, 2018 and 2017, respectively.

Stock Options

The options granted under the Plan vest over a period of approximately four years and have a ten-year exercise term. The options are subject to graded vesting whereby twenty-five percent of the options vest on the first anniversary of the issuance start date, and subsequently, the remaining vest ratably each month until 100% of the options are vested. Once vested, the recipients are allowed to purchase shares of the Company's stock at a fixed and specified exercise price that varies depending on the stock options' strike price.

The Company records stock-based compensation expense based on the grant-date fair value of options granted. The stock-based compensation expense is recognized ratably over the course of the requisite service period and is recorded in either operations and support, sales and marketing, research and development, or general and administrative expense, depending on the department of the recipient.

The stock option activity during the three months ended September 30, 2018 and 2017 is as follows:

	Number of Shares		Number of Shares
Balance, June 30, 2018	**4,735,973**	**Balance, June 30, 2017**	**3,551,749**
Granted	-	Granted	46,000
Exercised	(1,290)	Exercised	(69,583)
Forfeited	(177,844)	Forfeited	(135,333)
Balance, September 30, 2018	**4,556,839**	**Balance, September 30, 2017**	**3,392,833**

The stock option activity during the nine months ended September 30, 2018 and 2017 is as follows:

	Number of Shares		Number of Shares
Balance, December 31, 2017	**4,490,016**	**Balance, December 31, 2016**	**2,221,912**
Granted	546,501	Granted	1,525,900
Exercised	(235,476)	Exercised	(108,541)
Forfeited	(244,202)	Forfeited	(246,438)
Balance, September 30, 2018	**4,556,839**	**Balance, September 30, 2017**	**3,392,833**

The fair value of each stock option grant was estimated as of the grant date using an option-pricing model with the following ranges of assumptions and resulting weighted-average fair value per share for the three and nine months ended September 30, 2018 and 2017.

	Nine months ended September 30,	
	2018	**2017**
Weighted-average fair value on grant date	$ 4.80	$ 2.98
Risk free interest rates	1.64% - 2.13%	1.07% - 1.44%
Expected Volatility	40.3% - 44.6%	48.9%
Expected option life	0.75 - 1.50	0.50 - 3.00

Restricted Stock Awards ("RSAs")

The RSAs were granted under agreements entered into with certain employees in 2014. The RSAs were subject to a continuous employment clause and had an initial vesting period of approximately four years. In accordance with U.S. GAAP, the Company recognizes compensation expense related to the fair value of unvested RSAs on a straight-line basis until fully vested. The Company estimates the fair value of restricted stock awards on the grant date based on the value of its common stock. Stock compensation expense, related to the RSAs, is recorded as personnel and related costs within research and development expense.

During the three and nine months ended September 30, 2017, 70,769 and 210,000 shares of restricted stock awards vested, respectively. The RSAs were fully vested at December 31, 2017.

11. Asset Acquisition

On March 14, 2018, the Company entered into an asset purchase agreement with IndiePlate LLC, a Louisiana limited liability company, to acquire inventory, furniture and fixtures, and certain other equipment in exchange for $71 of consideration. Consideration consists of net cash paid of $11 and $60 of Series 2018 Notes. Acquired assets have been recorded in property and equipment, net.

On May 16, 2018, the Company acquired a customer relationship intangible asset from GoGoGrocer LLC, a Louisiana limited liability corporation that provides grocery shopping and delivery services, for consideration of 18,182 shares of the Company's common stock valued at $142.

12. Stockholders' Equity

The following descriptions summarize the material terms and provisions of the securities that the Company has authorized.

Common Stock

The Company's common stockholders are entitled to one vote per share. The Company did not hold any shares as treasury stock as of the periods presented in the accompanying condensed consolidated financial statements.

On January 2, 2017, the Company entered into an agreement with a vendor for specified promotional services in exchange for 293,128 shares of the Company's common stock. The services commenced on grant date and are expected to be completed over a period of three years. As the Company issued the shares upon execution of the agreement, the Company recorded a stockholder receivable for the fair value of the stock exchanged of approximately $361, as a contra-equity account. The Company recognized the non-cash consideration as additional paid in capital in the accompanying consolidated balance sheets and advertising expense of $30 for the three months ended September 30, 2018 and 2017 and $90 for the nine months ended September 30, 2018 and 2017 as general and administrative expense in the accompanying condensed consolidated statements of operations.

Preferred Stock

Preferred stockholders are entitled to cast the number of votes equal to the number of whole common stock into which the preferred stocks held by such holder are convertible, as of the record date, for determining stockholders entitled to vote on such matters. Preferred stock is convertible at the option of the preferred stockholder into common stock on a 1:1 basis, subject to certain adjustments. Upon a liquidation event, as defined in the Company's amended and restated Articles of Incorporation, assets available for distribution would be allocated first to amounts owed to Series AA preferred stockholders, including any dividends declared but unpaid thereon. Remaining assets, if any, would be distributed pro-rata to Series Seed (I and II) preferred stockholders, and finally, to common stockholders.

During the first quarter of 2017, the Company raised $7,224 through issuance of 2,341,477 shares of Preferred Series AA stock.

Warrants

On May 14, 2014, the Company granted warrants to non-employees ("Holders") to purchase 452,947 shares of the Company's common stock at an exercise price of $0.01. The warrants were subject to a vesting schedule at a rate of 12.5% shares per quarter over two years of service. During this period, the Holders were required to be part of the Company's legal team. The Warrants were only exercisable to the extent that the stock were vested, and have an expiration date on the tenth anniversary of the grant date. As of September 30, 2018, no warrants had been exercised.

Requested Amendment

On May 14, 2018, the Company entered into the First Amendment to Contract for Exchange of Stock ("Requested Amendment,"), modifying the terms of the original acquisition agreement. This Requested Amendment established a repurchase feature ("Repurchase Right") for Company common stock previously granted as consideration. The Requested Amendment establishes a two-year service period over the Repurchase Right lapse. In accordance with U.S. GAAP, the Company considered the Repurchase Right to be compensatory in nature due to the service requirement, and will recognize compensation expense over the required service term on the fair value of the stock on the grant date. Compensation expense is recorded as personnel and related costs within general and administrative expense.

There were 430,198 shares of previously issued and outstanding common stock subject to the Repurchase Right. During the three and nine months ended September 30, 2018, the Company recognized $430 and $650 of compensation expense, respectively. In addition to the stock subject to the Repurchase Right, the Requested Agreement also cancelled 147,247 shares of previously issued and outstanding common stock.

13. Loss Per Share Attributable to Common Stockholders

Basic loss per share is computed by dividing net loss attributable to common stockholders by the weighted-average number of common stock outstanding during the period, without consideration for common stock equivalents. Diluted loss per share attributable to common stockholders is computed by dividing net loss by the weighted-average number of common stock outstanding during the period and potentially dilutive common stock equivalents, including stock options, restricted stock awards, and warrants, except in cases where the effect of the common stock equivalent would be antidilutive.

The calculation of basic and diluted loss per share attributable to common stockholders for the three and nine months ended September 30, 2018 and 2017 is as follows (in thousands, except share data):

	Three months ended September 30,	
	2018	**2017**
Numerator:		
Net loss attributable to common stockholders - basic and diluted	**$ (6,515)**	**$ (4,120)**
Denominator:		
Weighted-average number of shares outstanding - basic	**11,309,308**	**11,150,767**
Effect of dilutive securities		
Convertible Preferred Stock		
Seed I	3,804,763	3,804,763
Seed II	3,680,017	3,680,017
Series AA	8,097,790	8,097,790
Stock Options	4,556,839	3,392,833
Warrants **(1)**	476,619	452,947
Weighted-average number of shares outstanding - diluted	**31,925,336**	**30,579,117**

(1) Includes Line of Credit Warrants (see Note 4 – Debt). The exact number of Line of Credit Warrants issued in connection with the $4,000 advanced under the line of credit, as of September 30, 2018, is dependent upon the determination of the Exercise Price, pursuant to the line of credit agreement. As of September 30, 2018, the Company estimated that 33,658 Line of Credit Warrants will be issued for purposes of computing the weighted-average number of shares outstanding.

	Nine months ended September 30,	
	2018	2017
Numerator:		
Net loss attributable to common stockholders - basic and diluted	**$ (17,341)**	**$ (11,378)**
Denominator:		
Weighted-average number of shares outstanding - basic	**11,219,053**	**11,120,644**
Effect of dilutive securities		
Convertible Preferred Stock		
Seed I	3,804,763	3,804,763
Seed II	3,680,017	3,680,017
Series AA	8,097,790	8,062,114
Stock Options	4,556,839	3,392,833
Warrants **(1)**	460,867	452,947
Weighted-average number of shares outstanding - diluted	**31,819,329**	**30,513,318**

(1) Includes Line of Credit Warrants (see Note 4 – Debt). The exact number of Line of Credit Warrants issued in connection with the $4,000 advanced under the line of credit, as of September 30, 2018, is dependent upon the determination of the Exercise Price, pursuant to the line of credit agreement. As of September 30, 2018, the Company estimated that 33,658 Line of Credit Warrants will be issued for purposes of computing the weighted-average number of shares outstanding.

Excluded from the calculation of weighted-average number of diluted stock outstanding is the effect of convertible notes, which have historically converted to preferred stock.

The Company generated a net loss from continuing operations attributable to the Company's common stockholders for the three and nine months ended September 30, 2018 and 2017. The effect of dilutive securities is not considered because their effect would be antidilutive on the net loss.

14. Related-Party Transactions

Beginning in 2017, the Company received public relations services from an affiliate of a stockholder of the Company. The Company incurred an expense of $28 and $16 for the three months ended September 30, 2018 and 2017, respectively, and $76 and $39 for the nine months ended September 30, 2018 and 2017, respectively, which is recorded in related party expenses in the accompanying condensed consolidated statements of operations.

Certain directors of the Company participated in the Company's issuance of Series 2017 Notes. Out of $7,484 principal amount issued as Series 2017 Notes, approximately $694 was funded by such directors. Additionally, certain directors of the Company are lenders under the Company's line of credit. As of September 30, 2018, of the $4,000 advanced on the line of credit, $2,360 was funded by directors. Interest expense for the three months ended September 30, 2018 included $52 of amounts paid to such directors. Further, it's estimated that 19,858 of Line of Credit Warrants will be issued to directors in connection with their advances to the Company on the line of credit. The estimated fair value of these director Line of Credit Warrants was approximately $19 as of September 30, 2018 and are reflected as a liability within other noncurrent liabilities. In connection with the advances made under the line of credit, a $295 origination fee is payable these directors, the liability for which was included within other noncurrent liabilities as of September 30, 2018.

Exhibit 99.2

UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Current Report on Form 8-K to which this pro forma financial information is being attached (the "Form 8-K"). Unless the context otherwise requires, the "Company" refers to the Waitr Holdings Inc. and its subsidiaries after the Closing, and Landcadia Holdings, Inc. prior the Closing.

The following unaudited pro forma condensed combined balance sheet as of September 30, 2018 assumes that the business combination and Debt Financings occurred on September 30, 2018. The unaudited pro forma condensed combined statement of operations for the nine months ended September 30, 2018 and year ended December 31, 2017 present pro forma effect to the business combination and Debt Financings if they had been completed on January 1, 2017.

The pro forma combined financial statements do not necessarily reflect what the post-combination company's financial condition or results of operations would have been had the acquisition occurred on the dates indicated. The pro forma combined financial information also may not be useful in predicting the future financial condition and results of operations of the post-combination company. The actual financial position and results of operations may differ significantly from the pro forma amounts reflected herein due to a variety of factors.

The historical financial information of the Company was derived from the unaudited and audited financial statements of Landcadia Holdings as of and for the nine months ended September 30, 2018 and for the year ended December 31, 2017. The historical financial information of Waitr was derived from the unaudited and audited consolidated financial statements of Waitr as of and for the nine months ended September 30, 2018, which are included elsewhere in the Form 8-K, and for the year ended December 31, 2017, which are incorporated by reference. This information should be read together with the Company's and Waitr's unaudited and audited financial statements and related notes, the sections titled "The Company's Management's Discussion and Analysis of Financial Condition and Results of Operations," which are incorporated by reference, and "Waitr Management's Discussion and Analysis of Financial Condition and Results of Operations" and other financial information included elsewhere in the Form 8-K.

The business combination was accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with GAAP. Under this method of accounting, the Company has been treated as the "acquired" company for financial reporting purposes. Accordingly, for accounting purposes, the business combination was treated as the equivalent of Waitr issuing stock for the net assets of the Company, accompanied by a recapitalization. The net assets of the Company were stated at historical cost, with no goodwill or other intangible assets recorded. Operations prior to the business combination are those of Waitr.

Waitr has been determined to be the accounting acquirer based on evaluation of the following facts and circumstances:

- The post-combination company's board of directors consists of seven directors. Waitr has control of the Chairmanship and appointed four of the seven Board members;
- Waitr holds C-suite management roles for the post-combination company.
- From a revenue and business operation standpoint, Waitr is the larger entity in terms of relative size;
- Waitr's current Lake Charles, LA headquarters are the headquarters of the post-combination company
- The post-combination company will assume Waitr's name
- The shares of common stock and warrants began trading on Nasdaq under the symbols "WTRH" and "WTRHW," respectively

- The intended strategy of the post-combination entity will continue Waitr's current strategy of partnering with local independent restaurants and regional and national chains in underserved markets

- Other factors were considered, including the fact that the Landcadia stockholder group has the greatest voting interest. However, Waitr holding the C-suite management roles for the post-combination company, in addition to its ability to appoint 4 of the 7 Board members significantly decreases the ability of the Landcadia stockholders to control on voting interest alone. Additionally, the Landcadia stockholder group holds only a slight majority with 57.8% of the voting interest.

Description of the business combination

The aggregate consideration for the business combination was approximately $300.0 million, payable in the form of cash and shares of the Company's common stock valued at $10.0 per share. The cash portion of the consideration was an aggregate amount equal to the sum of (i) $46,679,403 plus (ii) the Additional Cash Amount of $25,000,000. The remainder of consideration amount, less the Cash Consideration, was paid in the form of shares of the Company's common stock valued at $10.0 per share. In addition, 559,507 options to purchase Waitr shares that are unvested, outstanding and unexercised as of immediately prior to the Effective Time, were assumed by the Company. The following represents the aggregate consideration:

(in thousands)		**Nine Months ended September 30, 2018**
Shares transferred at Closing		22,832
Value per share (1)	$	10.0
Total Share Consideration	$	228,320
Plus: Cash Transferred to Waitr Stockholders		71,680
Total Cash and Share Consideration - at Closing	$	300,000

(1) Value represents the Reference Price per the Merger Agreement. The closing share price on the date of the consummation of the transaction was $11.31. As the business combination was accounted for as a reverse recapitalization, the value per share is disclosed for informational purposes only in order to indicate the fair value of shares transferred.

The following summarizes the pro forma common stock shares outstanding:

	Shares	**%**
LCA Merger Consideration shares (1)	22,831,697	
Total Waitr shares	22,831,697	42%
Shares issued to Founders in connection with financing	1,675,000	
Common shares held by current LCA shareholders	23,378,841	
Total LCA shares	25,053,841	46%
Founder shares	6,250,000	12%
Pro Forma Common Stock at September 30, 2018	54,135,538	100%

(1) Refer to the Consideration Shares table herein.

The following unaudited pro forma condensed combined balance sheet as of September 30, 2018 and the unaudited pro forma condensed combined statements of operations for the nine months ended September 30, 2018 and the year ended December 31, 2017 are based on the historical financial statements of the Company and Waitr. The unaudited pro forma adjustments are based on information currently available, assumptions, and estimates underlying the unaudited pro forma adjustments are described in the accompanying notes. Actual results may differ materially from the assumptions used to present the accompanying unaudited pro forma condensed combined financial information.

UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET
(in thousands)

	As of September 30, 2018				As of September 30, 2018
	Waitr (Historical)	Landcadia (Historical)	Pro Forma Adjustments	Debt Financing Adjustments	Pro Forma Combined
ASSETS					
Current assets:					
Cash and cash equivalents	$ 2,842	$ 1,332	$ 236,321 (A)	$ 82,050(K)	$ 217,864
			(68,405) (B)		
			(8,750) (D)		
			(16,431) (E)		
			(3,321) (G)		
			(3,274) (H)		
			(4,500) (J)		
Accounts receivable, net	3,508	-	-		3,508
Capitalized contract costs, current	1,591	-	-		1,591
Services receivable	623	-	-		623
Other current assets	2,631	19	-		2,650
Total current assets	**11,195**	**1,351**	**131,640**	**82,050**	**226,236**
Cash and cash equivalents held in trust	-	236,881	(236,881) (A)		-
Property and equipment, net	2,957	-	-		2,957
Capitalized contract costs, current	720	-	-		720
Goodwill	1,408	-	-		1,408
Intangible assets, net	285	-	-		285
Other noncurrent assets	144	-	-		144
Total assets	**16,709**	**238,232**	**(105,241)**	**82,050**	**231,750**
LIABILITIES AND STOCKHOLDERS' EQUITY					
Current Liabilities					
Accounts payable	1,733	560	(560) (A)		1,733
Gratuities payable	841	-	-		841
Deferred revenue, current	2,947	-	-		2,947
Income tax payable	13	477	-		490
Accrued payroll	2,092	-	-		2,092
Accrued interest	652	-	(652) (G)		-
Accrued professional fees	3,331	-	-		3,331
Short-term loan	1,310	-	-		1,310
Other current liabilities	1,920	-			1,920
Convertible loan payable to affiliate		1,500		(1,500)(K)	-
Total current liabilities	**14,839**	**2,537**	**(1,212)**	**(1,500)**	**14,664**
Long-term liabilities					
Line of Credit	3,600		(3,600) (J)		-
Term loan				24,066(K)	24,066
Convertible notes, net	8,589	-	(8,589) (G)	57,760(K)	57,760
Bifurcated embedded derivative on convertible notes	1	-	(1) (G)		-
Accrued workers' compensation liability	1,405	-			1,405
Deferred revenue, noncurrent	1,300	-			1,300
Other noncurrent liabilities	573	8,750	(8,750) (D)		73
			(500) (J)		
Total liabilities	**30,307**	**11,287**	**(22,652)**	**80,326**	**99,268**
Common stock subject to possible conversion (21,913,368 shares at conversion value as of June, 2018)	-	221,945	(221,945) (C)		-
Stockholders' equity(deficit)					
Class A common stock, $0.0001 par value	-	0	2 (C)		5
			2 (B)		
			1 (I)		
Class F common stock, $0.0001 par value	-	1	(1) (I)		-
Convertible Voting Preferred Stock: Seed I, Par Value of $0.00001	-	-	-		-
Convertible Voting Preferred Stock: Seed II, Par Value of $0.00001	-	-	-		-
Convertible Voting Preferred Stock: Seed	-	-	-		-

AA, Par Value of $0.00001					
Common Stock, Par Value of $0.00001	-	-	-		-
Additional paid-in capital	40,363	3,240	221,943 (C)	1,724(K)	203,269
			(68,405) (B)		
			(2) (B)		
			1,759 (F)		
			5,921 (G)		
			(3,274) (H)		
Accumulated deficit	(53,961)	1,759	(1,759) (F)		(70,792)
			(16,431) (E)		
			(400) (J)		
Total stockholders' equity (deficit)	**(13,598)**	**5,000**	**139,356**	**1,724**	**132,482**
Total liabilities and stockholders' equity(deficit)	**$ 16,709**	**$ 238,232**	**$ (105,241)**	**$ 82,050**	**$ 231,750**

See accompanying notes to unaudited pro forma condensed combined financial information.

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
(in thousands, except share and per share data)

	Nine Months Ended September 30, 2018					Nine Months Ended September 30, 2018
	Waitr (Historical)	Landcadia (Historical)	Pro Forma Adjustment		Debt Financing Adjustments	Pro Forma Combined
Revenue	$ 48,000	$ -	$ -			$ 48,000
Operating expenses:						
Operations and support	30,348	-	-			30,348
Sales and marketing	8,989	-	-			8,989
Research and development	1,988	-	-			1,988
General and administrative	22,426	1,312	1,381	(FF)		19,646
			(5,473)	(GG)		
Depreciation and amortization	902	-	-			902
Related party expenses	76	-	-			76
Loss on disposal of assets	8	-	-			8
Total operating expenses	**64,737**	**1,312**	**(4,092)**		-	**61,957**
(Loss) from operations	**(16,737)**	**(1,312)**	**4,092**		-	**(13,957)**
Other expenses and losses, net						
Interest expense (income), net	901	(2,690)	2,690	(AA)	2,340 (EE)	2,494
			(747)	(BB)		
Gain on derivative	(336)	-	336	(CC)		-
Other expenses	1	-	-			1
Net (loss) before income taxes	**(17,303)**	**1,378**	**1,813**		**(2,340)**	**(16,452)**
Income tax expense	38	472	-	(DD)	- (EE)	38
			(472)	(AA)		
Net (Loss) income	**$ (17,341)**	**$ 906**	**$ 2,285**		**$ (2,340)**	**$ (16,490)**
Earnings per Share						
Net (Loss) per shares of common stock – basic and diluted	$ (1.55)	$ (0.15)				$ (0.30)
Weighted average shares of common stock outstanding – basic and diluted	11,219,053	7,627,086				54,135,538

See accompanying notes to unaudited pro forma condensed combined financial information.

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS
(in thousands, except share and per share data)

	Twelve Months Ended December 31, 2017					Twelve Months Ended December 31, 2017
	Waitr (Historical)	Landcadia (Historical)	Pro Forma Adjustments		Debt Financing Adjustments	Pro Forma Combined
Revenues	$ 22,911	$ -				$ 22,911
Operating expenses						
Operations and support	17,668	-	-			17,668
Sales and marketing	5,617	-				5,617
Research and development	1,586	-				1,586
General and administrative	12,601	480	2,318	(FF)		15,399
Depreciation and amortization	723	-	-			723
Related party expenses	182	-	-			182
Impairment of intangible assets	584	-				584
Loss on disposal of assets	33	-	-			33
Total operating expenses	**38,994**	**480**	**2,318**		-	**41,792**
Operating (loss)	**(16,083)**	**(480)**	**(2,318)**		-	**(18,881)**
Other expenses and losses, net:						
Interest expense (income), net	281	(1,798)	1,798	(AA)	3,093 (EE)	3,091
			(283)	(BB)		
(Gain) Loss on derivative	52	-	(52)	(CC)		-
(Gain) Loss on debt extinguishment	10,537	-	-			10,537
Other expenses	(52)	-	-			(52)
Net (Loss) before income taxes	**(26,901)**	**1,318**	**(3,781)**		**(3,093)**	**(32,456)**
Income tax expense	6	448	-	(DD)	- (EE)	6
			(448)	(AA)		
Net (Loss) income	**$ (26,907)**	**$ 870**	**$ (3,333)**		**$ (3,093)**	**$ (32,462)**
Earnings per Share						
Net (Loss) per shares of common stock – basic and diluted	$ (2.42)	$ (0.05)				$ (0.60)
Weighted average shares of common stock outstanding – basic and diluted	11,141,548	7,553,650				54,135,538

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

1. Basis of Presentation

The business combination was accounted for as a reverse recapitalization in accordance with GAAP. Under this method of accounting, the Company has been treated as the "acquired" company for financial reporting purposes. Accordingly, for accounting purposes, the business combination was treated as the equivalent of Waitr issuing stock for the net assets of the Company, accompanied by a recapitalization. The net assets of the Company were stated at historical cost, with no goodwill or other intangible assets recorded. Operations prior to the business combination are those of Waitr.

The unaudited pro forma condensed combined balance sheet as of September 30, 2018 assumes that the business combination and Debt Financings occurred on September 30, 2018. The unaudited pro forma condensed combined statements of operations for the nine months ended September 30, 2018 and the year ended December 31, 2017 present pro forma effect to the business combination and Debt Financings as if they had been completed on January 1, 2017. These periods are presented on the basis of Waitr as the accounting acquirer.

The unaudited pro forma condensed combined balance sheet as of September 30, 2018 has been prepared using, and should be read in conjunction with, the following:

- Landcadia Holdings' unaudited balance sheet as of September 30, 2018 and the related notes for the period ended September 30, 2018, which is incorporated by reference;
- Waitr's unaudited consolidated balance sheet as of September 30, 2018 and the related notes for the period ended September 30, 2018, included elsewhere in the Form 8-K.

The unaudited pro forma condensed combined statement of operations for the nine months ended September 30, 2018 has been prepared using, and should be read in conjunction with, the following:

- Landcadia Holdings' unaudited statement of operations for the nine months ended September 30, 2018 and the related notes, which is incorporated by reference; and
- Waitr's unaudited statement of operations for the nine months ended September 30, 2018 and the related notes, included elsewhere in the Form 8-K.

The unaudited pro forma condensed combined statement of operations for the year ended December 31, 2017 has been prepared using, and should be read in conjunction with, the following:

- Landcadia Holdings' audited statement of operations for the twelve months ended December 31, 2017 and the related notes, which is incorporated by reference; and
- Waitr's audited statement of operations for the twelve months ended December 31, 2017 and the related notes, which is incorporated by reference.

Management has made significant estimates and assumptions in its determination of the pro forma adjustments. As the unaudited pro forma condensed combined financial information has been prepared based on these preliminary estimates, the final amounts recorded may differ materially from the information presented.

The unaudited pro forma condensed combined financial information does not give effect to any anticipated synergies, operating efficiencies, tax savings, or cost savings that may be associated with the business combination.

The pro forma adjustments reflecting the consummation of the business combination and Debt Financings are based on certain currently available information and certain assumptions and methodologies that the Company believes are reasonable under the circumstances. The unaudited condensed pro forma adjustments, which are described in the accompanying notes, may be revised as additional information becomes available and is evaluated. Therefore, it is likely that the actual adjustments will differ from the pro forma adjustments and it is possible the difference may be material. The Company believes that its assumptions and methodologies provide a reasonable basis for presenting all of the significant effects of the business combination based on information available to management at the time and that the pro forma adjustments give appropriate effect to those assumptions and are properly applied in the unaudited pro forma condensed combined financial information.

The unaudited pro forma condensed combined financial information is not necessarily indicative of what the actual results of operations and financial position would have been had the business combination taken place on the dates indicated, nor are they indicative of the future consolidated results of operations or financial position of the post-combination company. They should be read in conjunction with the historical financial statements and notes thereto of Landcadia Holdings and Waitr.

2. Accounting Policies

Upon consummation of the business combination, management will perform a comprehensive review of the two entities' accounting policies. As a result of the review, management may identify differences between the accounting policies of the two entities which, when conformed, could have a material impact on the financial statements of the post-combination company. Based on its initial analysis, management did not identify any differences that would have a material impact on the unaudited pro forma condensed combined financial information. As a result, the unaudited pro forma condensed combined financial information does not assume any differences in accounting policies.

3. Adjustments to Unaudited Pro Forma Condensed Combined Financial Information

The unaudited pro forma condensed combined financial information has been prepared to illustrate the effect of the business combination and has been prepared for informational purposes only.

The historical financial statements have been adjusted in the unaudited pro forma condensed combined financial information to give pro forma effect to events that are (1) directly attributable to the business combination, (2) factually supportable, and (3) with respect to the statements of operations, expected to have a continuing impact on the results of the post-combination company. Waitr and the Company have not had any historical relationship prior to the business combination. Accordingly, no pro forma adjustments were required to eliminate activities between the companies.

The pro forma combined provision for income taxes does not necessarily reflect the amounts that would have resulted had the post-combination company filed consolidated income tax returns during the periods presented.

The pro forma basic and diluted earnings per share amounts presented in the unaudited pro forma condensed combined statements of operations are based upon the number of Waitr's shares outstanding, assuming the business combination occurred on January 1, 2017.

Adjustments to Unaudited Pro Forma Condensed Combined Balance Sheet

The adjustments included in the unaudited pro forma condensed combined balance sheet as of September 30, 2018 are as follows:

(A) Reflects the reclassification of $236.9 million of cash and cash equivalents held in the Landcadia Holdings trust account that becomes available to fund the business combination after settlement of $560.0 thousand of accounts payable.

(B) Reflects, consideration of $68.4 million of cash and 22,831,697 shares of common stock of Landcadia Holdings valued at $10.0 per share, par value $0.0001 per share.

(C) Reflects the reclassification of $221.9 million of common stock subject to possible redemption to permanent equity.

(D) Reflects the settlement of $8.8 million of deferred underwriters' fees incurred during the Landcadia IPO due upon completion of the business combination.

(E) Reflects adjustments of $16.4 million to cash and accumulated deficit for transaction costs expected to be incurred in relation to the business combination.

(F) Reflects the reclassification of Landcadia Holdings' historical accumulated deficit.

(G) Reflects the conversion and settlement of $8.6 million of Waitr convertible notes payable. The holders of the Waitr convertible notes had the option to settle the outstanding note balance and accrued interest amount in cash in lieu of receiving Waitr equity. Approximately $3.3 million of the outstanding note payable balance was settled in cash. The remaining amount of notes payable were converted into Class A common stock.

(H) Reflects the cash amount paid to Waitr Stockholders that were deemed to be non-accredited by the Company in lieu of Class A common stock.

(I) Reflects the conversion of Class F common stock to Class A common stock.

(J) Reflects settlement of the outstanding line of credit, along with related accrued origination fee as of September 30, 2018.

(K) Reflects adjustments related to the Debt Facility and the Notes, including the requisite payment of the Company's outstanding loan to FEI Sponsor. Lenders under the Debt Facility are entitled to receive their pro rata share of warrants to purchase that number of shares of the Company's common stock such that they would receive $5.0 million of common equity. The total value assigned to the warrants was approximately $1.5 million using the Black-Scholes Model. The Notes are convertible at any time at the holder's election, in whole or in part into common equity of the Company at a rate of $13.0/share, subject to a conversion cap. If all of the Notes were converted, and additional 4.6 million shares would be issued to holders of the Notes.

Adjustments to Unaudited Pro Forma Condensed Combined Statements of Operations

The pro forma adjustments included in the unaudited pro forma condensed combined statements of operations for the nine months ended September 30, 2018 and year ended December 31, 2017 are as follows:

(AA) Elimination of interest income on the trust account and related tax impact.

(BB) Elimination of interest expense on the Convertible Notes.

(CC) Elimination of the gain/loss on the derivative related to the Convertible Notes.

(DD) Reflects the net impact on income taxes resulting from an income tax benefit attributable to application of the statutory tax rate of 25.5% to the adjustment related to reduction of interest expense incurred on Waitr's convertible notes, offset by the impact on the pro forma valuation allowance. The tax impacts of the business combination were estimated based on the applicable law in effect on September 30, 2018 and December 31, 2017, respectively, inclusive of the effects of the Tax Act which was signed into law on December 22, 2017.

(EE) Reflects additional interest expense as a result of the Debt Facility and the Notes, which was calculated based on the following terms:

	Debt Facility	**Notes**
Principal Balance	$25.0 million	$60.0 million
Term	4 years	4 years
Interest Rate	7.00% per annum, paid quarterly in cash or as payment-in-kind	1.00% per annum, paid quarterly in cash

Due to allocated discounts, the effective interest rates for the Debt Facility and the Notes were 7.97% and 1.94%, respectively.

(FF) Reflects additional compensation expenses recorded as a result of execution of employment agreements with the management team of the post combination company

(GG) Reflects the elimination of nonrecurring transaction costs incurred during the nine months ended September 30, 2018 that are directly attributable to the business combination.

4. Earnings per Share

Represents the net earnings per share calculated using the historical weighted average Waitr Holdings, LLC units and the issuance of additional shares in connection with the business combination, assuming the shares were outstanding since January 1, 2017. As the business combination and related proposed equity transactions are being reflected as if they had occurred at the beginning of the periods presented, the calculation of weighted average shares outstanding for basic and diluted net income (loss) per share assumes that the shares issuable relating to the business combination have been outstanding for the entire periods presented. If the maximum number of shares are redeemed, this calculation is retroactively adjusted to eliminate such shares for the entire periods.

	Twelve Months ended December 31, 2017	Nine Months ended September 30, 2018
Pro Forma Basic & Diluted Loss Per Share		
Pro Forma Net Loss Attributable to Common Shareholders	$ (32,462)	$ (16,490)
Basic & Diluted Shares Outstanding	54,135,538	54,135,538
Pro Forma Basic & Diluted Loss Per Share	$ (0.60)	$ (0.30)
Pro Forma Shares Outstanding - Basic & Diluted		
LCA Merger Consideration shares		22,831,697
Shares issued to Founders in connection with financing		1,675,000
Common shares held by current LCA shareholders		23,378,841
Founder shares		6,250,000
Pro Forma Shares Outstanding - Basic & Diluted		**54,135,538**

Financial Information

Reference is made to the unaudited interim condensed consolidated financial statements set forth in Exhibit 99.1 to this Report concerning the financial information of Waitr Inc. Reference is also made to the section contained in Landcadia Holdings, Inc.'s definitive proxy statement filed with the U.S. Securities and Exchange Commission (the "SEC") on November 1, 2018 (the "Proxy Statement") entitled Waitr Management's Discussion and Analysis of Financial Condition and Results of Operations" beginning on page 188, which is incorporated herein by reference.

WAITR MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the Unaudited Pro Forma Condensed Combined Financial Information included in Exhibit 99.2 hereto and incorporated by reference in this current report on Form 8-K (this "Form 8-K") and the section entitled "Summary Historical Financial Information" included elsewhere in this Form 8-K as well as the sections entitled "Summary Historical Financial Information of Waitr," "Information About Waitr" and "Waitr Management's Discussion and Analysis of Financial Condition and Results of Operations" included in the Proxy Statement and the audited consolidated financial statements of Waitr Incorporated ("Waitr") as of December 31, 2017 and 2016 and for the years ended December 31, 2017, 2016, and 2015 (the "audited financial statements") included in the Proxy Statement. Waitr is our accounting predecessor. Unless otherwise stated, the discussion below primarily reflects Waitr's historical condition and results of operations as of September 30, 2018 and for the three- and nine-month periods ended September 30, 2018 and 2017, which are based on Waitr's unaudited interim condensed consolidated financial statements as of that date and for the periods then ended (the "unaudited interim financial statements") included in Exhibit 99.1 hereto and incorporated by reference in this Form 8-K. Dollar amounts in this discussion are expressed in thousands, except as otherwise noted.

The following discussion contains forward-looking statements that reflect future plans, estimates, beliefs and expected performance. The forward-looking statements are dependent upon events, risks and uncertainties that may be outside of our control. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below and those discussed in the sections titled "Risk Factors — Risks Related to Waitr's Business and Industry" and "Cautionary Note Regarding Forward-Looking Statements" in the Proxy Statement, which are incorporated by reference herein. Waitr does not undertake any obligation to publicly update any forward-looking statements except as otherwise required by applicable law.

Overview

We operate an online ordering and delivery platform that enables consumers to discover and order meals from local restaurants, powered by our team of delivery drivers. Originally formed on December 5, 2013 as a Louisiana corporation, we began operations in 2014 and have grown quickly to connect restaurants, diners, and delivery drivers in various markets. We facilitate ordering of food and beverages by diners from restaurants for takeout and delivery, primarily through the Waitr platform. We market our proprietary application and digital platform to restaurants and diners mainly across small and medium sized markets, which we define as geographic city and town clusters within the top 51-500 markets in the United States based on population. These markets are home to approximately 35% of restaurants in the United States and an addressable population of 105 million. Like larger U.S. cities, these markets have growing demand for online and application-driven food takeout and delivery and have historically been underserved by our competitors. We believe that our focus on small and medium sized markets, established market launch playbook, and differentiated operating model provide us with a competitive advantage in our target markets.

As of September 30, 2018, we operated across ten states, in 40 markets comprised of 235 cities, and believe we were the market leader in the majority of these markets in terms of number of restaurants. We had approximately 7,700 Restaurant Partners (as defined below) on the Waitr platform as of September 30, 2018. Average Daily Orders (as defined below) for the three and nine months ended September 30, 2018 were approximately 24,300 and 20,600, respectively. During the three months ended September 30, 2018, we generated revenue of $19,431, compared to $5,886 in the same period of 2017. During the nine months ended September 30, 2018, we generated revenue of $48,000, compared to $14,333 in the same period of 2017.

Factors Affecting the Comparability of Our Results of Operations

The Landcadia Transaction, Convertible Notes, and Public Company Costs. On November 15, 2018 (the "Closing Date"), Waitr Holdings Inc. (formerly known as Landcadia Holdings, Inc.), a Delaware corporation, consummated its previously announced acquisition of Waitr Incorporated, a Louisiana corporation ("Waitr"), pursuant to the Agreement and Plan of Merger, dated as of May 16, 2018 (the "Merger Agreement"). The transactions contemplated by the Merger Agreement are referred to herein as the "Business Combination."

Upon the consummation of the Business Combination, Waitr merged with and into Merger Sub, with Merger Sub surviving the merger in accordance with the Delaware General Corporation Law as a wholly owned indirect subsidiary of the Company. In connection with the closing of the Business Combination (the "Closing"), Waitr's convertible promissory notes (the "Convertible Notes"), the total outstanding principal par amount of which was approximately $9,954 (carrying value of $8,589) as of September 30, 2018, plus accrued interest thereon through November 15, 2018, were either converted into shares of Waitr's Series AA preferred stock ("Series AA Preferred Stock"), and such new Series AA Preferred Stock was, in turn, exchanged for an aggregate 1,592,000 shares of our post-combination common stock, or redeemed for an amount equal to 1.5 times the amount of principal outstanding and accrued interest thereunder, resulting in an aggregate cash payment by us of $3,321. In addition, immediately after the consummation of the Business Combination, we repaid our line of credit, plus accrued interest, for a cash amount of $5,575 ($4,000 was outstanding at September 30, 2018). See "Liquidity and Capital Resources" below.

We recorded a loss on debt extinguishment of $10,537 in 2017 as a result of a Convertible Notes amendment that modified the conversion ratio, resulting in the application of extinguishment accounting and representing the difference between the fair value of the amended Convertible Notes of $18,308 and their carrying amount of $7,771. The conversion and cash redemption of the Convertible Notes and the exercise of warrants by the lenders under the aforementioned line of credit are expected to impact our income statement and stockholders' equity in future reporting periods that include the Business Combination.

Waitr is Landcadia's accounting predecessor and the Business Combination requires us to hire additional staff and implement procedures and processes to address regulatory and customary requirements applicable to operating public companies. We expect to incur additional annual expenses for, among other things, directors' and officers' liability insurance, director fees and additional internal and external accounting, legal and administrative resources, including increased audit and legal fees. We estimate that these incremental costs will amount to between approximately $1,500 and $2,500 per year, resulting in materially higher general and administrative expenses in future periods.

Changes in Fee Structure. We have made several modifications to our fee structure during the fiscal periods presented in the Proxy Statement. Since 2017, our fee structure evolved gradually from a per transaction fee plus a percentage of the food sale amount to one based exclusively on a percentage of the food sale amount, which applied to substantially all Restaurant Partners (which we define as a restaurant that has executed a definitive agreement to join the Waitr platform) in most markets since November 2017. In early 2018, we also established a new multi-tier fee structure, allowing new Restaurant Partners to elect higher fees in lieu of paying the one-time set-up and integration fee. As a result of these changes, which progressively resulted in modestly higher fees, our revenue and operating margins may not be comparable between periods, and future changes in fee structure could impact the comparability of results with future periods.

Seasonality and Holidays. Our business tends to follow restaurant closure and diner behavior patterns. In many of our markets, we generally experience a relative increase in diner activity from September to May and a relative decrease in diner activity from June to August due to school summer breaks and other vacation periods. In addition, restaurants tend to close on certain holidays, including Thanksgiving and Christmas Day, in our key markets. Further, diner activity may be impacted by unusually cold, rainy, or warm weather. Cold and rain typically drive increases in order volume, while unusually warm or sunny weather typically drives decreases in orders. Consequently, our results between quarters, or between periods that include prolonged periods of unusually cold, warm, inclement, or otherwise unexpected weather, may vary.

Acquisition Pipeline. We actively maintain and evaluate a pipeline of potential acquisitions and expect to be acquisitive in the future. While prior acquisitions have been relatively small, potentially significant future business acquisitions may impact the comparability of our results in future periods with those for prior periods.

Key Factors Affecting Our Performance

Efficient Market Expansion. Our continued revenue growth and path to improved cash flow and profitability is dependent on successful penetration of our target markets and achieving our targeted scale in current and future markets. Once a target market is identified, our market launch playbook calls for hiring a city/market manager to interview, hire and onboard new drivers, while our corporate and business development team is simultaneously deployed in-market to onboard an appropriate selection of strategically located and diverse restaurants. A local awareness and marketing campaign is typically commenced ahead of launch and temporarily ramped up simultaneously with operational launch, which is driven by the acquisition of a targeted number of Restaurant Partners and drivers. Delay or failure in achieving positive market-level margins (exclusive of indirect and corporate overhead costs) could adversely affect our working capital, which in turn could slow our growth plans.

We typically target markets that we estimate could achieve sustainable, positive market-level margins that support sustainable market operating cash flows and profits, improve efficiency, and appropriately leverage the scale of our advertising, marketing, research and development, and other corporate resources. Historically, we estimate that we have reached positive market-level margins (exclusive of indirect and corporate overhead costs) approximately six months, on average, following market launch. Our financial condition, cash flows, and results of operations depend, in significant part, on our ability to achieve and sustain our target profitability thresholds in our markets.

Our Restaurant and Diner Network. Our growth has been and is expected to continue to be driven in significant part by our ability to successfully expand our network of Restaurant Partners and diners using the Waitr Platform as the quality and quantity of Restaurant Partners on-boarded onto the Waitr Platform in a market drives the number of diners and order frequency, and, in turn, the number and quality of diners utilizing the Waitr Platform makes us more attractive to restaurants. We believe that our Restaurant Partner retention strategy, combining a modest Restaurant Partner set-up and integration fee investment with our differentiated, value-added services fosters Restaurant Partner loyalty and incentivizes Restaurant Partners to drive business toward the Waitr Platform. From inception, we have historically retained over 99% of our Restaurant Partners that commenced using the Waitr Platform. We also believe that our brand recognition, driven by our strong regional presence and employee delivery drivers, accessible customer service, and flat delivery fee further contributes to diner loyalty. We had approximately 7,700 and 2,900 Restaurant Partners on the Waitr Platform at September 30, 2018 and 2017, respectively.

Key Business Metrics

Defined below are the key business metrics that we use to analyze our business performance, determine financial forecasts, and help develop long-term strategic plans:

Active Diners. The number of diner accounts from which an order has been placed through the Waitr Platform during the past twelve months (as of the end of the relevant period).

Average Daily Orders. The number of orders during the period divided by the number of days in that period.

Gross Food Sales. The total food and beverage sales, sales taxes, prepaid gratuities and delivery fees processed through the Waitr Platform during a given period. Gross Food Sales are different than the order value upon which we charge our fee to Restaurant Partners, which excludes gratuities and delivery fees. We currently charge a delivery fee of $5 per delivery order in most of our markets, which is included in our revenue. Orders include a modest number of diner pick-up orders, which are not subject to our delivery fee. Prepaid gratuities, which are not included in our revenue, are determined by diners and may differ from order to order. Gratuities other than prepaid gratuities, such as cash tips, are not included in Gross Food Sales.

Average Order Size. Gross Food Sales for a given period divided by the number of orders during the same period.

The following table presents our key business metrics as of the dates or for the periods indicated:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Active Diners (as of period end)	842,533	327,528	842,533	327,528
Average Daily Orders	24,300	10,200	20,600	8,400
Gross Food Sales (dollars in thousands)	$ 77,692	$ 33,001	$ 197,505	$ 81,401
Average Order Size	$ 35.14	$ 35.61	$ 35.24	$ 35.63

Basis of Presentation

Revenue

We generate revenue primarily when diners place an order on the Waitr Platform. We engage a third-party payment processor to collect the total amount of the order from the diner, who must use a credit or debit card to pay for their meal, and remits the net proceeds, less our fee, the delivery fee and any gratuity amount, to the Restaurant Partner on a daily basis. Because we are acting as an agent of the Restaurant Partner in the transaction, we recognize as revenue only our fees (which are assessed as a percentage of the total food sales and related sales taxes, exclusive of delivery fees and gratuities for delivery orders) and delivery fees. Gratuities are not included in revenue because they are passed through to delivery drivers. We also generate revenue from setup and integration fees collected from Restaurant Partners to onboard them onto the Waitr Platform (these are recognized on a straight-line basis over the anticipated period of benefit, currently determined to be two years) and subscription fees from Restaurant Partners that opt to pay a monthly fee in lieu of a lump sum setup and integration fee. Revenue also includes, to a significantly lesser extent, grocery delivery fees (since the launch of this service in select markets in March 2017), and fees for restaurant marketing and data services. We generally present relevant restaurants on our application in order of proximity to the diner and we do not allow Restaurant Partners to pay to promote themselves within the Waitr Platform.

Cost and Expenses

Operations and Support. Operations and support expenses consist primarily of salaries, benefits, stock-based compensation and bonuses for employees and contractors engaged in operations and customer service, including drivers, who are mainly full-time and part-time employees and comprise a substantial majority of our approximately 10,000 employees as of September 30, 2018, as well as city/market managers, restaurant onboarding, photography and driver logistics personnel and payment processing costs for customer orders.

Sales and Marketing. Sales and marketing expenses consist primarily of salaries, commissions, benefits, stock-based compensation and bonuses for sales and sales support personnel, including restaurant business development managers, marketing employees and contractors, and third-party marketing expenses such as social media and search engine marketing, online display, team sponsorships (the costs of which are recognized on a straight line basis over the useful period of the contract) and print marketing.

Research and Development. Research and development expenses consist primarily of salaries, benefits, stock-based compensation and bonuses for employees and contractors engaged in the design, development, maintenance and testing of the Waitr Platform.

General and Administrative. General and administrative expenses consist primarily of salaries, benefits, stock-based compensation and bonuses for executive, finance and accounting, human resources and administrative employees, third-party legal, accounting, and other professional services, insurance (including auto, workers' compensation and general liability), corporate travel and entertainment and facilities rent.

Depreciation and Amortization. Depreciation and amortization expenses consist primarily of amortization of capitalized software development and depreciation of leasehold improvements, furniture, and equipment, primarily tablets deployed in restaurants. We do not allocate depreciation and amortization expense to other line items.

Related Party Expenses. Related party expenses consist primarily of third-party marketing expenses with a business affiliated with a stockholder.

Impairment of Intangible Assets. Impairment of intangible assets consists primarily of write downs of intangible assets, which relate primarily to technology acquired as a result of our acquisition of Requested, Inc. ("Requested"), resulting from a shift in our strategy that impacted the expected usage of the acquired technology, as well as minor impairments related to the replacement of internally developed software code.

Other Expenses (Income) and Losses (Gain), Net. Other expenses (income) and losses (gain), net primarily includes interest expense on outstanding debt, which in relevant periods consisted principally of accrued interest from convertible promissory notes.

Results of Operations

The following table sets forth our results of operations for the unaudited interim periods indicated, with line items presented in thousands of dollars and as a percentage of our revenue:

	Three months ended September 30,				Nine months ended September 30,			
(in thousands, except percentages [1])	**2018**	**% of Revenue**	**2017**	**% of Revenue**	**2018**	**% of Revenue**	**2017**	**% of Revenue**
Revenue	**$ 19,431**	**100%**	**$ 5,885**	**100%**	**$ 48,000**	**100%**	**$ 14,333**	**100%**
Costs and expenses:								
Operations and support	11,934	61	4,887	83	30,348	63	11,749	82
Sales and marketing	3,850	20	1,294	22	8,989	19	3,728	26
Research and development	791	4	399	7	1,988	4	1,142	8
General and administrative	8,469	44	3,156	54	22,426	47	7,880	55
Depreciation and amortization	400	2	154	3	902	2	530	4
Related party expenses	28	-	16	-	76	-	39	-
Loss on disposal of assets	-	-	33	1	8	-	33	-
Impairment of Intangible assets	-	-	-	-	-	-	576	4
Total costs and expenses	**25,472**	**131**	**9,939**	**169**	**64,737**	**135**	**25,677**	**179**
Income (loss) from operations	**(6,041)**	**(31)**	**(4,054)**	**(69)**	**(16,737)**	**(35)**	**(11,344)**	**(79)**
Other expenses (income) and (gain), net								
Interest expense (income), net	440	2	67	1	901	2	66	-
Gain on derivative	(9)	-	(4)	-	(336)	(1)	(4)	-
Other expenses (income)	39	-	-	-	1	-	(33)	-
Net loss before income taxes	**(6,511)**	**(34)**	**(4,117)**	**(70)**	**(17,303)**	**(36)**	**(11,373)**	**(79)**
Income tax expense	4	0	3	-	38	-	5	-
Net loss	**$ (6,515)**	**(34)**	**$ (4,120)**	**(70)**	**$ (17,341)**	**(36)**	**$ (11,378)**	**(79)**

(1) Percentages may not foot due to rounding

Three Months Ended September 30, 2018 Compared to the Three Months Ended September 30, 2017

Revenue

Revenue increased by $13,546, or 230%, to $19,431 in the three months ended September 30, 2018 from $5,885 in the three months ended September 30, 2017, due primarily to increased transaction volume and changes in fee structure, as the third quarter of 2018 reflected our modestly higher restaurant fee structure adopted as of November 2017. We operated in 40 markets in the three months ended September 30, 2018, compared to 26 markets in the three months ended September 30, 2017, while Average Daily Orders and Gross Food Sales increased to 24,300 and $77,692, respectively, in the third quarter of 2018 from 10,200 and $33,001, respectively, in the third quarter of 2017. Average Order Size declined slightly between periods.

Operations and Support Expenses

Operations and support expenses increased by $7,047, or 144%, to $11,934 in the three months ended September 30, 2018 from $4,887 in the three months ended September 30, 2017, due to increased business volume. As a percentage of revenue, operations and support expenses decreased to 61% in the third quarter of 2018 from 83% in the third quarter of 2017, primarily due to improved scale, as customer service and certain in-market support costs tend to increase more slowly than the increase in revenue growth in growing markets.

Sales and Marketing

Sales and marketing expense increased by $2,556, or 198%, to $3,850 in the three months ended September 30, 2018 from $1,294 in the three months ended September 30, 2017, primarily due to increased spend on digital marketing and sales commissions for business development managers attributable to our entry into new markets. As a percentage of revenue, sales and marketing expenses decreased to 20% in the third quarter of 2018 from 22% in the third quarter of 2017, reflecting the scalability of our marketing spend after it becomes established in new markets.

Research and Development

Research and development expense increased by $392, or 98%, to $791 in the three months ended September 30, 2018 from $399 in the three months ended September 30, 2017, primarily due to the addition of personnel focused on research and development activities and increased stock-based compensation.

General and Administrative

General and administrative expense increased by $5,313, or 168%, to $8,469 in the three months ended September 30, 2018 from $3,156 in the three months ended September 30, 2017, due primarily to business combination-related legal, accounting, consulting and other costs amounting to $1,870, increased stock-based compensation of $689 and increased auto and workers' compensation insurance premiums related to the addition of corporate and administrative headcount to support our increasing business volume. As a percentage of revenue, general and administrative expenses decreased to 44% in the third quarter of 2018 from 54% in the third quarter of 2017. Without the transaction costs incurred in the three months ended September 30, 2018, general and administrative expense would have been $6,599, or 34% of revenue. General and administrative expense tends be highly scalable, meaning that it tends to increase at a substantially slower pace than revenue, as a significant portion of these costs is fixed.

Depreciation and Amortization

Depreciation and amortization expenses increased by $246, or 160%, to $400 in the three months ended September 30, 2018 from $154 in the three months ended September 30, 2017.

Other expenses (income) and (gain), net

Other expenses and (gain), net were $470 in the three months ended September 30, 2018 compared to $63 in the three months ended September 30, 2017.

Income Tax Expense

Income tax expense increased to $4 in the three months ended September 30, 2018 from $3 for the three months ended September 30, 2017.

Net Loss

Net loss increased by $2,395, or 58%, to $6,515 in the three months ended September 30, 2018 from $4,120 in the three months ended September 30, 2017, for the reasons described above.

Nine Months Ended September 30, 2018 Compared to the Nine Months Ended September 30, 2017

Revenue

Revenue increased by $33,667, or 235%, to $48,000 in the nine months ended September 30, 2018 from $14,333 in the nine months ended September 30, 2017, due primarily to increased transaction volume, reflecting our expanded footprint into new markets as well as overall modestly higher fee structure, as discussed above. Average Daily Orders and Gross Food Sales increased to 20,600 and $197,505, respectively, in the first nine months of 2018 from 8,400 and $81,401, respectively, in the first nine months of 2017. Average Order Size declined slightly between periods.

Operations and Support Expenses

Operations and support expenses increased by $18,599, or 158%, to $30,348 in the nine months ended September 30, 2018 from $11,749 in the nine months ended September 30, 2017, due to increased business volume. As a percentage of revenue, operations and support expenses decreased to 63% in the first nine months of 2018 from 82% in the first nine months of 2017, primarily due to improved scale, as customer service and certain in-market support costs tend to increase more slowly than the increase in revenue growth in growing markets.

Sales and Marketing

Sales and marketing expense increased by $5,261, or 141%, to $8,989 in the nine months ended September 30, 2018 from $3,728 in the nine months ended September 30, 2017, due primarily to increased digital marketing and sales commissions for business development managers attributable to our entry into new markets. As a percentage of revenue, sales and marketing expenses decreased to 19% in the first nine months of 2018 from 26% in the first nine months of 2017, due to improved scale.

Research and Development

Research and development expense increased by $846, or 74%, to $1,988 in the nine months ended September 30, 2018 from $1,142 in the nine months ended September 30, 2017, primarily due to the addition of personnel focused on research and development activities and increased stock-based compensation.

General and Administrative

General and administrative expense increased by $14,546, or 185%, to $22,426 in the nine months ended September 30, 2018 from $7,880 in the nine months ended September 30, 2017, due primarily to business combination-related legal, accounting, consulting and other costs of $5,473, increased stock-based compensation of $2,118, increased auto and workers' compensation insurance premiums related to increased headcount and our increasing business volume. As a percentage of revenue, general and administrative expenses decreased to 47% in the first nine months of 2018 from 55% in the first nine months of 2017. Without the transaction costs incurred in the nine months ended September 30, 2018, general and administrative expense would have been $16,953, or 35% of revenue.

Depreciation and Amortization

Depreciation and amortization expenses increased by $372, or 70%, to $902 in the nine months ended September 30, 2018 from $530 in the nine months ended September 30, 2017.

Other expenses (income) and (gain), net

Other expenses (income) and (gain), net were $566 in the nine months ended September 30, 2018, compared to $29 in the nine months ended September 30, 2017. The increase was due primarily to interest expense associated with the Convertible Notes that were issued in late 2017.

Income Tax Expense

Income tax expense increased by $33, or 660%, to $38 in the nine months ended September 30, 2018 from $5 in the nine months ended September 30, 2017.

Net Loss

Net loss increased by $5,963, or 52%, to $17,341 in the nine months ended September 30, 2018 from $11,378 in the nine months ended September 30, 2017 for the reasons described above.

Liquidity and Capital Resources

As of September 30, 2018, we had cash of $2,842, consisting primarily of cash deposits, which earn an immaterial amount of interest. Our primary sources of liquidity to date have been proceeds from the issuance of stock, long-term convertible debt and proceeds from the unsecured line of credit (see below). Our pro forma cash balance at September 30, 2018, assuming the Business Combination had been consummated on that date, would have been approximately $71,247. We currently plan to invest a substantial portion of our cash in U.S. Treasury and high investment grade municipal or corporate securities. We believe that our existing cash, including the cash attributable to the Business Combination, will be sufficient to meet our working capital requirements for at least the next twelve months. Our liquidity assumptions may, however, prove to be incorrect, and we could utilize available financial resources sooner than currently expected.

On November 15, 2018, immediately after the consummation of the Business Combination, we repaid our line of credit, which we obtained in July 2018 from certain of our stockholders and their affiliates, in a cash amount of $5,575 ($4,000 was outstanding at September 30, 2018), which included the payment of a $500 origination fee. In addition, these lenders exercised their line of credit warrants on that date, for which we received $337 in cash, pursuant to the terms of the warrants.

Our main capital expenditures relate to the purchase of tablets for Restaurant Partners, which are expected to increase as we continue to grow our business. Our future capital requirements and the adequacy of available funds will depend on many factors, including those set forth under “Risk Factors” in the Proxy Statement incorporated herein by reference. If we are unable to obtain needed additional funds, we will have to reduce our operating costs, which would impair our growth prospects and could otherwise negatively impact our business.

The following table sets forth our summary cash flow information for the periods indicated:

	Nine months ended September 30,	
(in thousands)	**2018**	**2017**
	(unaudited)	
Net cash used in operating activities	$ (5,989)	$ (9,209)
Net cash used in investing activities	(1,847)	(1,123)
Net cash provided by financing activities	6,731	11,951

Cash Flows Used In Operating Activities

For the nine months ended September 30, 2018, net cash used in operating activities was $5,989, compared to $9,209 for the same period in 2017, reflecting substantially higher working capital payables accruals, mainly for business combination-related expenses, which more than offset the increased cash operating expenses attributable to market growth and new market expansion efforts.

Cash Flows Used In Investing Activities

Our primary investing activities during all of the periods presented was the purchase of property and equipment, comprised primarily of computer tablets for our Restaurant Partners. The tablets remain our property. We control software applications and updates on the tablets, and the tablets are devoted exclusively to the Waitr Platform. We also periodically purchase office furniture, equipment, computers and software.

For the nine months ended September 30, 2018, net cash used in investing activities was $1,847 compared to $1,123 for the nine months ended September 30, 2017.

Cash Flows Provided By Financing Activities

Our financing activities during the periods presented consisted primarily of convertible debt and stock issuances and proceeds from our unsecured line of credit.

For the nine months ended September 30, 2018, net cash provided by financing activities was $6,731, primarily reflecting the issuance of the Convertible Notes in the first quarter of 2018, as well as proceeds of $4,000 from our unsecured line of credit, compared to $11,951 for the nine months ended September 30, 2017, which reflected primarily issuances of 2,341,477 shares of Series AA preferred stock in the first quarter of 2017 of $7,224.

Contractual Obligations and Other Commitments

We have corporate offices in Lake Charles and Lafayette, Louisiana, as well as smaller offices across the Southeastern United States. Our lease for the Lake Charles office expires in October 2022, and the leases for our Lafayette offices expire in March 2022 and August 2026. We recognize rent expense on a straight-line basis over the relevant lease period.

Our future minimum lease payments under non-cancellable operating leases for equipment and office facilities, workers' compensation obligations and monthly loan payments were as follows as of September 30, 2018:

		Payments Due by Period			
(in thousands)	**Less than 1 Year**	**1 to 3 Years**	**3 to 5 Years**	**Thereafter**	**Total**
Operating lease obligations	$ 720	$ 1,853	$ 1,601	$ 1,505	$ 5,679
Workers' compensation liability[(1)]	35	70	70	1,229	1,404
Loan agreement[(2)]	1,310	-	-	-	1,310
Total	**2,065**	**1,923**	**1,671**	**2,734**	**8,393**

(1) On November 27, 2017, Guarantee Insurance Company ("GIC"), our former workers' compensation insurer, was ordered into the receivership for purposes of liquidation by the Second Judicial Circuit Court in Leon County, Florida. At the time of the court order, GIC was administering our outstanding workers' compensation claims. Upon entering receivership, the guaranty associations of the states where GIC operated began reviewing outstanding claims administered by GIC for continued claim coverage eligibility based on guaranty associations' eligibility criteria. Our net worth exceeded the threshold of $25,000 established by the Louisiana Insurance Guaranty Association ("LIGA") when determining eligibility for claims coverage. As such, LIGA assessed our outstanding claim as ineligible for coverage. As of September 30, 2018, we had $1,404 in workers' compensation liabilities which will be recognized ratably over 40 years.

(2) On June 4, 2018, we entered into a loan agreement with First Insurance Funding to finance our commercial insurance premiums. The loan is payable in monthly installment payments, until maturity. The loan matures on March 21, 2019 and carries an annual interest rate of 3.39%.

The Convertible Notes, the carrying value of which was $8,589 as of September 30, 2018, and the amounts outstanding under the aforementioned unsecured line of credit, under which we had $4,000 outstanding as of September 30, 2018, as well as the related accrued but unpaid interest obligations and fees, are not included in the table above because they have been converted, redeemed or repaid upon the consummation of the Business Combination, as discussed above. The other contractual commitment amounts in the table above are associated with agreements that are enforceable and legally binding, while obligations under other contracts that we can cancel without a significant penalty are not included.

We are also a party to certain ordinary course multi-year sponsorship agreements, but have no material long-term purchase obligations outstanding with any vendors or other third parties.

Off-Balance Sheet Arrangements

We did not have any off-balance sheet arrangements as of September 30, 2018.

Quantitative and Qualitative Disclosures about Market Risk

We have in the past and may in the future be exposed to interest rate and certain other market risks in the ordinary course of our business, but to date these risks have mostly been indirect.

Interest Rate Risk

As discussed above, we did not have any long-term borrowings as of September 30, 2018 other than the convertible notes and line of credit, which were converted or repaid upon the consummation of the Business Combination. We invest excess cash primarily in bank accounts, on which we earn marginal interest. Upon the consummation of the Business Combination, our cash on hand increased substantially, as a result of which our exposure to interest rate risk may increase, although our current investment strategy is to preserve principal and provide liquidity for our operating and market expansion needs. Since our investments have been and are expected to remain mainly short-term in nature, we do not believe that changes in interest rates would have a material effect on the fair market value of our investments or our operating results.