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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

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(Mark one)

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

For the quarterly period ended June 25, 2014

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-36556

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**EL POLLO LOCO HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of incorporation or organization)

**20-3563182**  
(I.R.S. Employer Identification No.)

**3535 Harbor Blvd., Suite 100, Costa Mesa, California**  
(Address of principal executive offices)

**92626**  
(Zip Code)

**(714) 599-5000**  
(Registrant's telephone number, including area code)

**N/A**  
(Former name, former address and former fiscal year, if changed since last report)

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

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

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

Large accelerated filer  Accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

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

As of September 4, 2014, there were 36,929,836 shares of the issuer's common stock outstanding.

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## PART I—FINANCIAL INFORMATION

## Item 1. Financial Statements.

EL POLLO LOCO HOLDINGS, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)  
(Amounts in thousands, except share data)

	June 25, 2014	December 25, 2013
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 27,134	\$ 17,015
Restricted cash	125	131
Accounts and other receivables, net	5,648	5,906
Inventories	1,665	1,655
Prepaid expenses and other current assets	3,218	2,123
Deferred tax assets	442	442
<b>Total current assets</b>	<b>38,232</b>	<b>27,272</b>
Property and equipment owned, net	75,255	68,641
Property held under capital leases, net	154	180
Goodwill	249,324	249,324
Domestic trademarks	61,888	61,888
Other intangible assets, net	853	934
Other assets	7,462	8,703
<b>Total assets</b>	<b>\$ 433,168</b>	<b>\$ 416,942</b>
<b>Liabilities and Stockholder's Equity</b>		
<b>Current liabilities:</b>		
Current portion of senior secured term loan	\$ 1,900	\$ 1,900
Current portion of obligations under capital leases	239	267
Accounts payable	15,421	12,316
Accrued salaries and vacation	7,999	8,594
Accrued insurance	4,401	3,597
Accrued income taxes payable	34	27
Accrued interest	4,301	4,182
Accrued advertising	404	265
Other accrued expenses and current liabilities	8,159	7,825
<b>Total current liabilities</b>	<b>42,858</b>	<b>38,973</b>
<b>Noncurrent liabilities:</b>		
First lien term loan, net of current portion	186,334	187,190
Second lien term loan	99,129	99,038
Obligations under capital leases, net of current portion	744	847
Deferred tax liabilities	33,206	32,387
Other intangible liabilities, net	1,735	1,927
Other noncurrent liabilities	8,277	8,044
<b>Total liabilities</b>	<b>372,283</b>	<b>368,406</b>
<b>Commitments, contingencies and subsequent events</b>		
<b>Stockholder's Equity</b>		
Preferred stock, \$0.01 par value, 100,000,000 shares authorized; none outstanding		
Common stock, \$0.01 par value—200,000,000 shares authorized; 28,715,550 and 28,712,622 shares issued and outstanding	287	287
Additional paid-in-capital	240,461	240,151
Accumulated deficit	(179,863)	(191,902)
<b>Total stockholder's equity</b>	<b>60,885</b>	<b>48,536</b>
<b>Total liabilities and stockholder's equity</b>	<b>\$ 433,168</b>	<b>\$ 416,942</b>

See notes to condensed consolidated financial statements (unaudited).

**EL POLLO LOCO HOLDINGS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)**  
**(Amounts in thousands)**

	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	June 25, 2014	June 26, 2013	June 25, 2014	June 26, 2013
<b>Revenue</b>				
Company-operated restaurant revenue	\$ 81,358	\$ 76,520	\$ 157,571	\$ 148,589
Franchise revenue	5,546	5,207	10,760	10,133
<b>Total revenue</b>	<u>86,904</u>	<u>81,727</u>	<u>168,331</u>	<u>158,722</u>
<b>Cost of operations</b>				
Food and paper cost	25,930	24,207	49,953	46,903
Labor and related expenses	20,102	19,218	39,415	38,288
Occupancy and other operating expenses	16,945	15,874	32,989	31,398
<b>Company restaurant expenses</b>	62,977	59,299	122,357	116,589
General and administrative expenses	6,835	6,298	13,465	12,491
Franchise expenses	943	981	1,926	1,950
Depreciation and amortization	2,752	2,541	5,347	4,945
Loss on disposal of assets	215	391	491	581
Asset impairment and close-store reserves	340	36	393	101
<b>Total expenses</b>	<u>74,062</u>	<u>69,546</u>	<u>143,979</u>	<u>136,657</u>
<b>Income from operations</b>	12,842	12,181	24,352	22,065
Interest expense, net	5,703	9,800	11,326	19,580
<b>Income before provision for income taxes</b>	7,139	2,381	13,026	2,485
Provision for income taxes	(570)	(1,971)	(987)	(2,135)
<b>Net income</b>	<u>\$ 6,569</u>	<u>\$ 410</u>	<u>\$ 12,039</u>	<u>\$ 350</u>
<b>Net income per share</b>				
Basic	\$ 0.23	\$ 0.01	\$ 0.42	\$ 0.01
Diluted	\$ 0.21	\$ 0.01	\$ 0.39	\$ 0.01
<b>Weighted-average shares used in computing net income per share</b>				
Basic	28,715,485	28,712,622	28,714,053	28,712,622
Diluted	<u>30,596,998</u>	<u>28,999,093</u>	<u>30,595,565</u>	<u>28,999,093</u>

See notes to condensed consolidated financial statements (unaudited).

**EL POLLO LOCO HOLDINGS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)**  
**(Amounts in thousands)**

	<b>Twenty-Six Weeks Ended</b>	
	<b>June 25, 2014</b>	<b>June 26, 2013</b>
<b>Cash flows from operating activities:</b>		
Net income	\$ 12,039	\$ 350
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	5,347	4,945
Stock-based compensation	337	116
Interest accretion	185	3,217
Loss on disposal of assets	455	568
Impairment of property and equipment	36	20
Close-store reserve	357	81
Amortization of deferred financing costs	779	1,059
Amortization of favorable and unfavorable leases, net	(111)	(107)
Deferred income taxes, net	819	2,109
Changes in operating assets and liabilities:		
Accounts and other receivables, net	258	(1,890)
Inventories	(10)	32
Prepaid expenses and other current assets	(1,095)	(481)
Income taxes payable	7	(3)
Other assets	468	63
Accounts payable	1,070	1,622
Accrued salaries and vacation	(622)	(463)
Accrued insurance	804	360
Other accrued expenses and liabilities	468	(1,088)
Net cash flows provided by operating activities	<u>21,591</u>	<u>10,510</u>
<b>Cash flows from investing activities:</b>		
Purchase of property and equipment	<u>(10,391)</u>	<u>(7,415)</u>
Net cash flows used in investing activities	<u>(10,391)</u>	<u>(7,415)</u>
<b>Cash flows from financing activities:</b>		
Payments on senior secured loan	(950)	(850)
Payment of obligations under capital leases	<u>(131)</u>	<u>(110)</u>
Net cash flows used in financing activities	<u>(1,081)</u>	<u>(960)</u>
<b>Increase in cash and cash equivalents</b>	<b>10,119</b>	<b>2,135</b>
<b>Cash and cash equivalents, beginning of period</b>	<b>17,015</b>	<b>21,487</b>
<b>Cash and cash equivalents, end of period</b>	<b><u>\$ 27,134</u></b>	<b><u>\$ 23,622</u></b>
<b>Supplemental cash flow information</b>		
Cash paid during the period for interest	<u>\$ 10,058</u>	<u>\$ 15,264</u>
Cash paid during the period for income taxes, net	<u>\$ 161</u>	<u>\$ 29</u>
Unpaid purchases of property and equipment	<u>\$ 2,035</u>	<u>\$ 569</u>
Cashless stock option exercise	<u>(27)</u>	<u>—</u>

See notes to the condensed consolidated financial statements (unaudited).

**EL POLLO LOCO HOLDINGS, INC.**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)**

**1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Overview**

El Pollo Loco Holdings, Inc. (“Holdings”) is a Delaware corporation headquartered in Costa Mesa, California. Holdings and its direct and indirect subsidiaries are collectively known as “we,” “us” or the “Company.” Our activities are conducted principally through our indirect subsidiary, El Pollo Loco, Inc. (“EPL”), which develops, franchises, licenses, and operates quick-service restaurants under the name El Pollo Loco® and operates under one business segment. At June 25, 2014, we operated 168 and franchised 233 El Pollo Loco restaurants.

**Basis of Presentation**

We have prepared the accompanying interim unaudited condensed consolidated financial statements pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”). Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles in the United States (“GAAP”) for complete financial statements. In our opinion, all adjustments considered necessary for the fair presentation of our results of operations, financial position, and cash flows for the periods presented have been included and are of a normal, recurring nature. The results of operations for interim periods are not necessarily indicative of the results to be expected for a full year. These financial statements should be read in conjunction with the audited financial statements and notes thereto for the year ended December 25, 2013, included in our prospectus filed with the SEC pursuant to Rule 424(b)(4) under the Securities Act of 1933 (the “Securities Act”) on July 28, 2014.

We use a 52- or 53-week fiscal year ending on the last Wednesday of the calendar year. In a 52-week fiscal year, each quarter includes 13 weeks of operations; in a 53-week fiscal year, the first, second and third quarters each include 13 weeks of operations and the fourth quarter includes 14 weeks of operations. Every six or seven years a 53-week fiscal year occurs. Fiscal 2013, which was a 52-week year, ended on December 25, 2013. Fiscal 2014, which is a 53-week year, will end on December 31, 2014. Because fiscal 2014 is a 53-week year, both revenues and expenses, and other financial and operational figures, may be on an elevated scale compared with 52-week periods both before and after.

On July 14, 2014, we amended our certificate of incorporation to increase our authorized share count to 200,000,000 shares of common stock, par value \$0.01 per share, and split our stock 8.56381:1. On July 24, 2014, we amended and restated our certificate of incorporation to, among other things, increase our authorized share count to 300,000,000 shares of stock, including 200,000,000 shares of common stock and 100,000,000 shares of preferred stock, each par value \$0.01 per share. On July 30, 2014, we completed our initial public offering of 8,214,286 shares of common stock at a price to the public of \$15.00 per share (the “IPO”), including 1,071,429 shares sold to the underwriters pursuant to their option to purchase additional shares. After underwriting discounts, commissions, and fees and expenses of IPO offering and distribution, as set forth in our registration statement for the IPO on Form S-1, we received net IPO proceeds of approximately \$112.8 million. We used these proceeds primarily to repay in whole a \$100 million second lien term loan (the “Second Lien Term Loan”). All share and per-share data herein have been adjusted to reflect the stock split as though it had occurred prior to the earliest data presented.

The accompanying condensed consolidated financial statements include the accounts of Holdings and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

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**Use of Estimates**

The preparation of financial statements in conformance with GAAP requires us to make estimates and assumptions that affect (i) the reported amounts of assets and liabilities, and disclosures of contingent assets and liabilities, at the date of the financial statements, and (ii) revenue and expenses during the period reported. Actual results could materially differ from those estimates. Our significant estimates include estimates for (i) impairment of goodwill, intangible assets and plant and equipment, (ii) insurance reserves, (iii) lease termination liabilities, (iv) stock-based compensation, and (v) income tax valuation allowances.

**Reclassifications**

Certain comparative prior year amounts in the condensed consolidated financial statements and accompanying notes have been reclassified to conform to the current year presentation. These reclassifications had no effect on previously reported net income.

**Liquidity**

Our principal liquidity requirements are to service our debt and to meet capital expenditure needs. At June 25, 2014, our total debt was \$288.3 million. Our ability to make payments on our indebtedness and to fund planned capital expenditures depends on available cash and on our ability to generate adequate cash flows in the future, which, to a certain extent, is subject to general economic, financial, competitive, legislative, regulatory, and other factors that are beyond our control. Based on current operations, we believe that our cash flow from operations, available cash of \$27.1 million at June 25, 2014, and available borrowings under our \$15 million senior secured revolving credit facility (the "Revolver") (which availability was approximately \$7.7 million at June 25, 2014) will be adequate to meet our liquidity needs for the next 12 months.

**Concentration of Risk**

We have two suppliers for which amounts due at June 25, 2014, and December 25, 2013, totaled 44% and 45% and 16% and 11%, respectively, of our accounts payable. Purchases from the same suppliers accounted for the majority of our purchases for the periods ended June 25, 2014, and June 26, 2013. Company-operated and franchised restaurants in the greater Los Angeles area generated, in the aggregate, approximately 80% of revenue for the thirteen and twenty-six weeks ended June 25, 2014, and June 26, 2013.

**Goodwill and Indefinite Lived Intangible Assets**

Our indefinite lived intangible assets consist of trademarks. Goodwill represents the excess of cost over fair value of net identified assets acquired in business combinations accounted for under the purchase method. We do not amortize our goodwill and indefinite lived intangible assets.

Upon the sale of a restaurant, we decrement goodwill. The amount of goodwill that we include in the cost basis of the asset sold is determined based on the relative fair value of the reporting unit disposed of as a percentage of the fair value of the reporting unit retained.

We perform an annual impairment test for goodwill during the fourth fiscal quarter of each year, or more frequently if impairment indicators arise.

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We review goodwill for impairment utilizing either a qualitative assessment or a two-step process. If we decide that it is appropriate to perform a qualitative assessment and conclude that the fair value of a reporting unit more likely than not exceeds its carrying value, no further evaluation is necessary. If we perform the two-step process, the first step of the goodwill impairment test is used to identify potential impairment by comparing the fair value of a reporting unit with its carrying amount, including goodwill. If the fair value of a reporting unit exceeds its carrying amount, goodwill of the reporting unit is considered not impaired and the second step of the impairment test is unnecessary. If the carrying amount of a reporting unit exceeds its fair value, the second step is performed to measure the amount of impairment by comparing the carrying amount of the goodwill to a determination of the implied value of the goodwill. If the carrying amount of goodwill is greater than the implied value, an impairment charge is recognized for the difference.

We perform annual impairment tests for indefinite lived intangible assets during the fourth fiscal quarter of each year or earlier if indicators of potential impairment exist. The impairment test consists of either a qualitative assessment or a comparison of the fair value of the intangible asset with its carrying amount. The excess of the carrying amount of the intangible asset over its fair value is its impairment loss.

We did not identify any indicators of potential impairment during the first half of fiscal 2014 and therefore did not perform any impairment review.

### **Income Taxes**

Provision for income taxes, income taxes payable, and deferred income taxes are determined using the asset and liability method. Deferred tax assets and liabilities are determined based on temporary differences between the financial carrying amounts and the tax bases of assets and liabilities using enacted tax rates in effect in the years in which the temporary differences are expected to reverse. On a periodic basis, we assess the probability that our net deferred tax assets, if any, will be recovered. If, after evaluating all of the positive and negative evidence, we conclude that it is more likely than not that some or all of the net deferred tax assets will not be recovered, we provide for a valuation allowance by charging to tax expense to reserve the portion of deferred tax assets that we do not expect to be realized. At June 25, 2014, and December 25, 2013, we maintained a full valuation allowance against our deferred tax assets. The company will continue to evaluate all positive and negative evidence at each financial statement period to determine if the valuation allowance should be adjusted.

We review our filing positions for all open tax years in all U.S. federal and state jurisdictions where we are required to file.

When there are uncertainties related to potential income tax benefits, in order to qualify for recognition, the position we take has to have at least a “more likely than not” chance of being sustained (based on the position’s technical merits) upon challenge by the respective authorities. The term “more likely than not” means a likelihood of more than 50 percent. Otherwise, we may not recognize any of the potential tax benefit associated with the position. We recognize a benefit for a tax position that meets the “more likely than not” criterion at the largest amount of tax benefit that is greater than 50 percent likely of being realized upon its effective resolution. Unrecognized tax benefits involve our judgment regarding the likelihood of the benefit being sustained. The final resolution of uncertain tax positions could result in adjustments to recorded amounts and may affect our results of operations, financial position, and cash flows.

We recognize interest and penalties related to income tax matters in income tax expense. We had no accrual for interest or penalties at June 25, 2014, or at December 25, 2013, and did not recognize interest or penalties during the thirteen and twenty-six weeks ended June 25, 2014, and June 26, 2013, respectively, since we had no material unrecognized tax benefits. We do not anticipate material changes in our amount of unrecognized tax benefits within the next twelve months.

On July 30, 2014, we entered into an Income Tax Receivable Agreement (the “TRA”). The TRA calls for us to pay to our pre-IPO stockholders 85% of the savings in cash that we realize in our taxes as a result of utilizing our net operating losses and other tax attributes attributable to preceding periods. In connection with the TRA, we have amended our first lien credit agreement (the “First Lien Credit Agreement”) to permit dividend payments to us by our subsidiaries in amounts up to \$11 million per fiscal year, not to exceed \$33 million in the aggregate.



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## 2. PROPERTY AND EQUIPMENT

Below are costs and related accumulated depreciation and amortization of major classes of property, in thousands.

	June 25, 2014	December 25, 2013
Land	\$ 13,186	\$ 13,186
Buildings and improvements	83,569	78,181
Other property and equipment	46,932	46,079
Construction in progress	4,349	815
	<u>148,036</u>	<u>138,261</u>
Less: accumulated depreciation and amortization	<u>(72,781)</u>	<u>(69,620)</u>
	<u>\$ 75,255</u>	<u>\$ 68,641</u>

Depreciation expense was \$2.8 million and \$2.5 million and \$5.3 million and \$4.9 million for the thirteen and twenty-six weeks ended June 25, 2014, and June 26, 2013, respectively. The gross value of assets under capital leases was \$1.9 million at both June 25, 2014, and December 25, 2013, and corresponding accumulated depreciation was \$1.7 million for both periods. For the thirteen weeks ended June 25, 2014, capital expenditures totaled \$6.7 million, including \$3.3 million for restaurant remodeling and \$2.3 million for new restaurant expenditures. For the twenty-six weeks ended June 25, 2014, capital expenditures totaled \$10.4 million, including \$5.4 million for restaurant remodeling and \$3.1 million for new restaurant expenditures.

## 3. STOCK-BASED COMPENSATION

At June 25, 2014, options to purchase 3,331,764 shares of common stock were outstanding, including 2,087,335 vested and 1,244,429 unvested. Unvested options vest over time, or upon our achieving annual financial goals. However, upon a change in control, the board may accelerate vesting. At June 25, 2014, 2,062,448 premium options remained outstanding. For the twenty-six weeks ended June 25, 2014, there was one exercise of stock options for 739 shares.

At June 25, 2014, we had total unrecognized compensation expense of \$0.5 million, related to unvested stock options, which we expect to recognize over a weighted-average period of 1.3 years.

## 4. CREDIT AGREEMENTS

On October 11, 2013, we refinanced our debt (the "2013 Refinancing"), with EPL entering into (i) the First Lien Credit Agreement, including a \$190 million senior secured term loan (the "First Lien Term Loan") and the Revolver, each maturing in October 2018, and (ii) a new second lien credit agreement (the "Second Lien Credit Agreement") including the Second Lien Term Loan. The proceeds received from the term loans were used to pay off our prior credit agreements, including our senior secured first lien credit facility due July 2017 and 17% second priority senior secured notes due January 2018.

Loans under the First Lien Credit Agreement bear interest, at EPL's option, at LIBOR or an Alternate Base Rate, plus an applicable margin of 4.25% with respect to LIBOR and 3.25% with respect to the Alternate Base Rate, with a 1.00% floor with respect to LIBOR. The First Lien Term Loan was issued at a discount of \$950,000, and this discount is being accreted over the term of the loan, using the effective interest method. The unamortized discount at June 25, 2014, is \$816,000. The First Lien Term Loan requires quarterly principal payments of 0.25%, commencing March 26, 2014. The First Lien Term Loan and the Revolver are secured by a first priority lien on substantially all of EPL's and Intermediate's assets.

The Revolver provides a \$15 million revolving line of credit. At June 25, 2014, \$7.3 million in letters of credit were outstanding, and \$7.7 million was available to borrow.

Loans under the Second Lien Credit Agreement bore interest, at EPL's option, at LIBOR or an Alternate Base Rate, plus an applicable margin of 8.50% with respect to LIBOR and 7.50% with respect to the Alternate Base Rate, with

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a 1.00% floor with respect to LIBOR. The Second Lien Term Loan was issued at a discount of \$1.0 million, and this discount was accreted over the term of the loan, using the effective interest method. The unamortized discount at June 25, 2014, was \$871,000. Following the IPO, we fully repaid the Second Lien Term Loan.

The First Lien Credit Agreement contains a number of negative and financial covenants, including, among others, the following (all subject to certain exceptions): a maximum total leverage ratio covenant, a minimum interest coverage ratio covenant, a maximum capital expenditure covenant, and limitations on indebtedness, liens, investments, asset sales, mergers, consolidations, liquidations and dissolutions, restricted payments, and negative pledges. The First Lien Credit Agreement also contains certain customary affirmative covenants and events of default. At June 25, 2014, we were in compliance with all covenants.

### 5. OTHER ACCRUED EXPENSES AND CURRENT LIABILITIES

Other accrued expenses and current liabilities consist of the following, in thousands.

	<b>June 25, 2014</b>	<b>December 25, 2013</b>
Accrued sales and property taxes	\$ 2,949	\$ 3,190
Other	5,210	4,635
<b>Total other accrued expenses and current liabilities</b>	<b><u>\$ 8,159</u></b>	<b><u>\$ 7,825</u></b>

### 6. OTHER NONCURRENT LIABILITIES

Other noncurrent liabilities consist of the following, in thousands.

	<b>June 25, 2014</b>	<b>December 25, 2013</b>
Deferred rent	\$ 6,780	\$ 6,648
Other	1,497	1,396
<b>Total noncurrent liabilities</b>	<b><u>\$ 8,277</u></b>	<b><u>\$ 8,044</u></b>

### 7. COMMITMENTS AND CONTINGENCIES

#### Legal Matters

Around February 24, 2014, a former employee filed a class action in the Superior Court of the State of California, County of Orange, against EPL on behalf of all putative class members (all hourly employees from 2010 to the present) alleging certain violations of California labor laws, including failure to pay overtime compensation, failure to provide meal periods and rest breaks, and failure to provide itemized wage statements. The putative lead plaintiff's requested remedies included compensatory and punitive damages, injunctive relief, disgorgement of profits, and reasonable attorneys' fees and costs. No specific amount of damages sought was specified in the complaint. We were served with the complaint on March 3, 2014. While we intend to vigorously defend against this action, including its class certification, its ultimate outcome is presently not determinable, as it is in a preliminary phase. Thus, we cannot determine the likelihood of an adverse judgment nor a likely range of damages, if any. A settlement or adverse judgment could have a material adverse impact.

We are involved in various claims and legal actions that arise in the ordinary course of business. We do not believe that the ultimate resolution of these actions will have a material adverse effect on our financial position, results of operations, liquidity, or capital resources. A significant increase in the number of claims or an increase in amounts payable under successful claims could materially adversely affect our business, financial condition, results of operations or cash flows.

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**Purchasing Commitments**

We have long-term beverage supply agreements with certain major beverage vendors. Pursuant to the terms of these arrangements, marketing rebates are provided to us and our franchisees from beverage vendors based upon dollar volumes of purchases system-wide, which vary with demand for and the price of syrup. Our contracts extend so far as 2017, and our estimated obligations under them total \$21.5 million.

We have two supplier contracts for chicken that terminate in December 2014 and January 2015. We entered into these agreements in December 2013 at costs comparable to those of the contracts that preceded them. At June 25, 2014, our estimated obligations under them totaled \$15.8 million.

**Contingent Lease Obligations**

We are contingently liable for two leases that we assigned to franchisees. The latest lease expires in 2015. At June 25, 2014, our maximum exposure was \$87,000, or \$76,000, if discounted at our estimated pre-tax cost of debt. In the event of a franchisee default, we could cross-default the franchisee under its franchise agreement. We believe that cross-default provisions reduce our risk of payments, and we have not recorded any liability in our condensed consolidated financial statements related to these liabilities.

**Employment Agreements**

We have at-will employment agreements with four of our officers. These agreements provide for minimum salary levels, possible annual adjustments for cost-of-living changes, and incentive bonuses payable under certain conditions.

**Indemnification Agreements**

We have entered into indemnification agreements with each of our current directors and executive officers. These agreements require us to indemnify them to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them where they could be indemnified. We also intend to enter into indemnification agreements with our future directors and executive officers.

**8. NET INCOME PER SHARE**

Basic net income per share is calculated using the weighted-average shares of common stock outstanding during the thirteen and twenty-six weeks ended June 25, 2014, and June 26, 2013. Diluted net income per share is calculated using the weighted-average number shares of common stock outstanding and potentially dilutive during the period, using the treasury stock method.

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Below are our basic and diluted net income per share data for the periods indicated, in thousands except for per share data.

	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	June 25, 2014	June 26, 2013	June 25, 2014	June 26, 2013
<b>Numerator:</b>				
Net income	\$ 6,569	\$ 410	\$ 12,039	\$ 350
<b>Denominator:</b>				
Weighted-average shares outstanding—basic	28,715,485	28,712,622	28,714,053	28,712,622
Weighted-average shares outstanding—diluted	30,596,998	28,999,093	30,595,565	28,999,093
Net income per share—basic	\$ 0.23	\$ 0.01	\$ 0.42	\$ 0.01
Net income per share—diluted	\$ 0.21	\$ 0.01	\$ 0.39	\$ 0.01
Anti-dilutive securities not considered in diluted EPS Calculation	123,106	1,957,529	123,106	1,957,529

Below is a reconciliation of basic and diluted shares.

	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	June 25, 2014	June 26, 2013	June 25, 2014	June 26, 2013
Weighted-average shares outstanding—basic	28,715,485	28,712,622	28,714,053	28,712,622
Dilutive effect of stock options	1,881,513	286,471	1,881,512	286,471
Weighted-average shares outstanding—diluted	30,596,998	28,999,093	30,595,565	28,999,093

## 9. RELATED PARTY TRANSACTIONS

Trimaran Capital LLC, and Freeman Spogli & Co., our sponsors, indirectly beneficially own shares sufficient for majority control over all matters requiring stockholder votes, including elections of directors, mergers, consolidations, acquisitions, sales of all or substantially all of our assets, other decisions affecting our capital structure, amendments to our certificate of incorporation or by-laws, and our winding up and dissolution. Furthermore, so long as Trimaran Pollo Partners, L.L.C. (“LLC”), their investment vehicle, owns a majority of our common stock, our sponsors can appoint the members of our board of directors.

On November 18, 2005, we entered into a Monitoring and Management Services Agreement with Trimaran Fund Management, LLC, providing for annual fees of \$500,000 and reasonable expenses. During the thirteen and twenty-six weeks ended June 25, 2014, and June 26, 2013, \$134,000 and \$169,000 and \$292,000 and \$324,000, respectively, were paid under the agreement, and accounted for as general and administrative expenses. In connection with the IPO, we have terminated the agreement.

## 10. SUBSEQUENT EVENTS

### Texas Franchisee Transactions

On July 8, 2014, we agreed to sell six company-operated restaurants in the greater San Antonio area to AA Pollo, Inc., a Texas corporation. This sale is expected to close on September 24, 2014. In connection with the sale, AA Pollo, Inc., entered into an exclusive development agreement with us to develop and open eight restaurants in the greater San Antonio area. On August 20, we agreed to an additional exclusive franchise development agreement with AA Pollo, Inc., and its owners, for the development of twelve restaurants in the Houston area.

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**Franchise Development Option Agreement**

On July 11, 2014, EPL and LLC entered into a Franchise Development Option Agreement relating to development of our restaurants in the New York–Newark, NY–NJ–CT–PA Combined Statistical Area (the “Territory”). EPL granted LLC the exclusive option to develop and open fifteen restaurants in the Territory over five years (the “Initial Option”), and, provided that the Initial Option is exercised, the exclusive option to develop and open up to an additional one hundred restaurants in the Territory over ten years (the “Additional Option”). The Franchise Development Option Agreement terminates (i) ten years after execution, or (ii) if the Initial Option is exercised, five years after that exercise. LLC may only exercise the Initial Option if EPL first determines to begin development of company-operated restaurants in the Territory or support the development of the Territory. We have no current intention to begin development in the Territory.

**IPO Compensation Arrangements**

In connection with the completion of our IPO, we granted options to purchase 223,183 shares of our common stock to selected employees who are not our executive officers with \$15.00 exercise prices, the IPO price and fair market value as of the date of grant. We will incur approximately \$1.3 million of stock-based compensation expense in connection with these grants, which we will expense over four years.

In addition, in connection with the completion of our IPO, we granted two of our directors restricted grants for 3,333 shares each, equivalent to \$50,000 divided by our public offering price. These grants vest based on continued service over three years. Based on our share price when the grants were consummated, we expect to incur approximately \$330,000 of stock-based compensation expense as the grants vest.

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

### **Cautionary Statement Concerning Forward-Looking Statements**

This discussion and analysis should be read in conjunction with Item 1 above and with the financial statements contained in our prospectus of July 24, 2014. This discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Outcomes may differ materially from our expectations. For more information, we direct you to the sections “Risk Factors” and “Special Note Regarding Forward-Looking Statements” in our prospectus. We make no guarantees regarding outcomes, and assume no obligations to update the forward-looking statements herein, except pursuant to law.

### **Overview**

El Pollo Loco is a differentiated and growing restaurant concept that specializes in fire-grilling citrus-marinated chicken in front of our customers. We operate within the fastest growing segment of the restaurant industry, the limited-service restaurant segment. We believe we offer the food quality of a fast-casual restaurant, while providing the speed, convenience, and value of a quick-service restaurant (“QSR”), a combination that we call “QSR+” and that provides a value-oriented fast-casual dining experience. Our distinctive menu features our signature product—citrus-marinated fire-grilled chicken—and a variety of Mexican-inspired entrees that we create from our chicken. We offer our customers healthier alternatives to traditional food on the go, served by our engaging team members in a colorful, bright and contemporary restaurant environment. We serve individual and family-sized chicken meals, a variety of Mexican-inspired entrees, sides, and, throughout the year, on a limited-time basis, alternative proteins such as shrimp, carmitas, and beef. Our entrees include such favorites as our Poblano Burrito, Under 500 Calorie Mango Grilled Tostada, Ultimate Pollo Bowl, Grand Baja Shrimp Tacos, and Chicken, Bacon, and Guacamole Stuffed Quesadilla. Our salsas and dressings are freshly prepared daily, allowing our customers to create their favorite flavor profiles to enhance their culinary experiences. Our distinctive menu, with its healthier alternatives, appeals to consumers across socio-economic backgrounds, and drives our balanced day-part mix.

### **Growth Strategies and Outlook**

We believe that we are well-positioned for, and in the early stages of, growth. Since 2011, we have focused on repositioning our brand, improving operational efficiency, increasing brand awareness, strengthening our management team, and refinancing our indebtedness. We plan to continue to expand our business, drive restaurant sales growth, and enhance our competitive positioning, by executing on the following strategies.

- Expand our restaurant base.
- Increase comparable restaurant sales.
- Enhance operations and leverage infrastructure.

We intend for new restaurant development to be a key growth driver. As of June 25, 2014, we had 401 locations in five states. In 2013, we opened two new company-operated and five new franchised restaurants. In 2014, we intend to open eight to ten new company-operated and four to six new franchised restaurants in California, Nevada, and Texas. Year to date, we have opened one new company-operated restaurant. From time to time, we and our franchisees close restaurants. In 2014, we anticipate closing one to two company-operated restaurants. Our long-term plan is to increase the number of El Pollo Loco restaurants by 8% to 10% annually. Success is not guaranteed.

To increase comparable restaurant sales, we are targeting customer frequency, attraction of new customers, and per-person spend.

We believe that our corporate infrastructure can support a larger restaurant base than we have at present, and that as we expand we will be able to benefit from economies of scale.

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[Table of Contents](#)**Highlights and Trends****Comparable Restaurant Sales**

System-wide, for the quarter and year-to-date periods ended June 25, 2014, comparable restaurant sales increased 5.4% and 6.3%, respectively. For company-operated restaurants, comparable restaurant sales increased 5.0% and 5.2%, respectively. For franchised restaurants, comparable restaurant sales increased 5.9% and 7.1%, respectively. For company-operated restaurants, the quarter's 5.0% increase was due to a 2.8% increase in average check size, and a 2.2% increase in traffic.

**Restaurant Development**

Our restaurant counts at the end of each of the last three fiscal years and the twenty-six weeks ended June 25, 2014, are as follows.

	Twenty-Six Weeks Ended	Fiscal Year Ended		
	June 25, 2014	2013	2012	2011
<b>Company-operated restaurant activity:</b>				
Beginning of period	168	169	165	171
Openings	1	2	4	—
Closures	(1)	(3)	—	(6)
Restaurants at end of period	168	168	169	165
<b>Franchised restaurant activity:</b>				
Beginning of period	233	229	229	241
Openings	—	5	3	—
Closures	—	(1)	(3)	(12)
Restaurants at end of period	233	233	229	229
<b>System-wide restaurant activity:</b>				
Beginning of period	401	398	394	412
Openings	1	7	7	—
Closures	(1)	(4)	(3)	(18)
Restaurants at end of period	401	401	398	394

**Restaurant Remodeling**

From 2011 to June 25, 2014, under our Hacienda program, we have remodeled 83 company-operated and 94 franchised restaurants, or 177 system-wide. We expect to have remodeled over 50% of our system by the end of 2014. Remodeling uses cash and affects financial statement line items including depreciation and net property. Our average expenditure per restaurant is \$270,000. We believe that remodeling will lead to higher revenue and a stronger brand.

**2013 Refinancing**

On October 11, 2013, we refinanced our \$12.5 million first lien revolving credit facility, \$170 million first lien term loan, and \$105 million 17% second priority senior secured notes, by entering into the First Lien Credit Agreement and the Second Lien Credit Agreement. The facilities under these agreements carried longer maturities and lower interest rates than the facilities that they replaced. This refinancing lowered our interest expense by an estimated \$17.8 million per annum, or 49% of our \$36.3 million of interest expense for fiscal 2013.

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***Initial Public Offering***

On July 30, 2014, we closed our IPO, the majority of the proceeds of which were used to repay our \$100 million Second Lien Term Loan. Thus, the IPO lowered our interest expense by an estimated \$10.1 million per annum, or 27.8% of our \$36.3 million of interest expense for fiscal 2013.

**Critical Accounting Policies and Use of Estimates**

Preparation of our financial statements in accordance with GAAP requires us to make estimates, judgments, and assumptions. We base our estimates and judgments on historical experience and on assumptions that we believe to be reasonable. We evaluate our estimates on an on-going basis. Outcomes may diverge from our estimates and assumptions.

Our accounting policies and estimates are integral to our financial statements, and a thorough understanding of them is important for understanding our financial condition and results of operations. Our critical accounting policies and estimates involve complex and difficult managerial judgments. For a summary of our critical accounting policies and a discussion of our use of estimates, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Use of Estimates” in our prospectus of July 24, 2014. For a summary of our significant accounting policies and a discussion of our use of estimates, see also Note 1 to Item 1 above.

There have been no material changes to our critical accounting policies or uses of estimates since our prospectus of July 24, 2014.

**Recent Accounting Pronouncements**

We have reviewed all significant recent accounting pronouncements and concluded either that they either are not applicable to our operations or that no material effect is expected on our consolidated financial statements as a result of future adoption.

**JOBS Act**

We presently qualify as an “emerging growth company” (“EGC”) under section 2(a) of the Securities Act, pursuant to the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”). An EGC has reduced public company reporting, accounting, and corporate governance requirements. We may take advantage of some of these benefits. We will cease to be an EGC following the earliest of (i) five years after our IPO, (ii) \$1.0 billion in annual revenue, (iii) \$700.0 million in common stock market capitalization held by non-affiliates, and (iv) \$1.0 billion in non-convertible debt security issuance on a three-year rolling basis. Please refer to our prospectus of July 24, 2014, for more information.

**Key Financial Definitions**

***Revenue***

Our revenue is derived from two primary sources, (i) company-operated restaurant revenue and (ii) franchise revenue. The latter is comprised of, primarily, franchise royalties, and, to a lesser extent, franchise fees and sublease rental income.

***Food and Paper Costs***

Food and paper costs include the direct costs of food, beverages, and packaging. These vary with sales volumes, menu mix, and commodity prices.



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***Labor and Related Expenses***

Labor and related expenses include wages, payroll taxes, workers' compensation expense, benefits, and bonuses paid to our restaurant management teams. We expect labor expense to increase proportionately with restaurant revenue. Labor expense is influenced by minimum wages, payroll taxes, workers' compensation claims, health care costs, and restaurant performance.

***Occupancy Costs and Other Operating Expenses***

Occupancy costs include rent, common area maintenance, and real estate taxes. Other restaurant operating expenses include utilities, advertising, credit card processing fees, supplies, and repairs and maintenance.

***General and Administrative Expenses***

General and administrative expenses are associated with corporate and administrative functions that support the development and operations of our restaurants, including compensation, benefits, travel expenses, stock compensation costs, and legal and professional fees. General and administrative expenses also include pre-opening costs and expenses above the restaurant level, including salaries for field management, such as area and regional managers, and franchise field operational support.

***Franchise Expenses***

Franchise expenses consist primarily of (i) rent expenses incurred on properties leased by us and then sublet to franchisees, and (ii) expenses incurred in support of franchisee information technology systems.

***Depreciation and Amortization***

Depreciation and amortization consist primarily of fixed asset depreciation, including of equipment and leasehold improvements.

***Loss on Disposal of Assets***

Loss on disposal of assets includes losses from retirement, replacement, or write-off of equipment and leasehold improvements.

***Asset Impairment and Close-Store Reserves***

We review, unit-by-unit, long-lived assets including property, equipment, and intangibles, for impairment, when events or circumstances indicate that their carrying values may not be recoverable. Correspondingly, we record impairment charges when appropriate. Closure costs include non-cash restaurant charges, such as up-front expensing of unpaid rent for the remaining life of a lease.

***Interest Expense, Net***

Interest expense, net, consists primarily of interest on our outstanding debt. Debt issuance costs are amortized, at cost, over the life of related debt.

***Loss on Early Extinguishment of Debt***

In connection with the 2013 Refinancing and our IPO, we prepaid existing debt, incurring charges for prepayment penalties and fees, call premia, accelerated accretion, and write-off of deferred financing costs and fees, and of unamortized discount.

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### ***Provision for Income Taxes***

Provision for income taxes reflects federal and state taxes.

### **Key Performance Indicators**

To evaluate our performance, we utilize measures including company-operated restaurant revenue, comparable restaurant sales, comparable restaurant sales growth, company-operated average unit volumes, restaurant contribution, restaurant contribution margin, new restaurant openings, EBITDA, and adjusted EBITDA.

#### ***Company-Operated Restaurant Revenue***

Company-operated restaurant revenue consists of food and beverage sales, in company-operated restaurants, net of promotional allowances, employee meals, and other discounts. Company-operated restaurant revenue for any period is affected by the number of operating weeks in that period, the number of restaurants open, and comparable restaurant sales.

Seasonality and holiday timing cause our revenue to fluctuate from quarter to quarter. Our revenue per restaurant is typically lower in the first and fourth quarters, due to reduced January and December traffic, and higher in the second and third quarters.

#### ***Comparable Restaurant Sales and Comparable Restaurant Sales Growth***

Comparable restaurant sales reflect year-over-year sales changes for comparable company-operated, franchised, and system-wide restaurants. A restaurant enters our comparable restaurant base the first full week after it has operated for fifteen months. At June 25, 2014 and June 26, 2013, there were 391 and 387 such restaurants, 163 and 160 company-operated and 228 and 227 franchised, respectively. Comparable restaurant sales indicate the performance of existing restaurants, since new restaurants are excluded.

Comparable restaurant sales growth reflects year-over-year sales changes, in percent. Growth can be driven by (i) an increase in the number of meals sold or (ii) an increase in average check amount. Average check amount can increase due to (i) increased consumption of existing menu items, (ii) consumption of new menu items, (iii) increased prices, or (iv) a shift to more-expensive menu items.

#### ***Company-Operated Average Unit Volumes***

We measure company-operated average unit volumes (“AUVs”) on both a weekly and an annual basis. Weekly AUVs consist of comparable restaurant sales over a seven-day period, from Thursday to Wednesday. Annual AUVs are calculated using the following methodology. First, we divide our total net sales for all company-operated restaurants for a fiscal year by the total number of restaurant operating weeks during that period. Second, we annualize that average weekly per-restaurant sales figure by multiplying it by 52. An operating week is defined as a week in which a particular restaurant is open for business over a seven-day period, from Thursday to Wednesday. AUV measures help us to assess (i) our performance and (ii) customer spending patterns.

#### ***Restaurant Contribution and Restaurant Contribution Margin***

Restaurant contribution and restaurant contribution margin are neither required by, nor presented in accordance with, GAAP. Restaurant contribution is defined as company-operated restaurant revenue, less company restaurant expenses. Restaurant contribution margin is defined as restaurant contribution, as a percentage of net company-operated restaurant revenue. Restaurant contribution and restaurant contribution margin are supplemental measures of operating performance for our restaurants. Our calculations thereof may not be comparable to those reported by other companies. Restaurant contribution and restaurant contribution margin have analytical limitations, and you should not consider them in isolation or as substitutes for analysis of our GAAP results. Management believes that restaurant contribution and restaurant contribution margin are important investor tools, because they are widely used in the restaurant industry to evaluate restaurant-level productivity, efficiency, and performance. Management uses

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restaurant contribution and restaurant contribution margin as key metrics to evaluate the profitability of incremental sales at our restaurants, to evaluate our restaurant performance across periods, and to evaluate our restaurant financial performance against our competitors.

### *New Restaurant Openings*

We track new restaurant openings system-wide. Restaurants initially require pre-opening costs. Upon opening, new restaurants often experience unsustainably high sales volumes, which subsequently stabilize. Also, new restaurants often suffer from temporary inefficiencies regarding food, paper, labor, and other direct operating expenses. Consequently, a new restaurant generally has a low contribution margin during its start-up phase. Restaurant revenue and expenses generally normalize after about eight to twelve weeks. When we enter new markets, we may be exposed to start-up times and restaurant contribution margins that are longer and lower than reflected in our average historical experience.

### *EBITDA and Adjusted EBITDA*

EBITDA represents net income before interest expense, provision for income taxes, depreciation, and amortization. Adjusted EBITDA, as we define it, represents net income before interest expense, provision for income taxes, depreciation, amortization, and items that we do not consider representative of our ongoing operating performance, as identified in the reconciliation table below.

EBITDA and adjusted EBITDA are supplemental measures of our performance, are neither required by, nor presented in accordance with, GAAP, and should not be considered as alternatives to net income, operating income, or any other GAAP performance measures, or as alternatives to cash flows from operating activities as liquidity measures. In addition, in evaluating EBITDA and adjusted EBITDA, you should be aware that in the future we will incur expenses or charges such as those added back to calculate EBITDA and adjusted EBITDA. Our presentation of EBITDA and adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or nonrecurring items.

EBITDA and adjusted EBITDA have analytical limitations, and you should not consider them in isolation or as substitutes for analysis of our GAAP results. Some of these limitations are (i) they do not reflect our cash expenditures, or future requirements for capital expenditures or contractual commitments, (ii) they do not reflect changes in, or cash requirements for, our working capital needs, (iii) they do not reflect the significant interest expense on our debt, or the cash requirements necessary to service interest or principal payments thereon, (iv) although depreciation and amortization are non-cash charges, assets being depreciated or amortized often must be replaced in the future, and EBITDA and adjusted EBITDA do not reflect the cash required for replacements, (v) they do not adjust for all non-cash income or expense items that are reflected in our statements of cash flows, (vi) they may include some expenses that we do not consider to be indicative of our ongoing operations, and (vii) other companies in our industry may calculate these measures differently than we do, limiting their usefulness as comparative measures.

We compensate for these limitations by (i) providing specific information regarding the GAAP amounts excluded from such non-GAAP financial measures, and (ii) presenting comparable GAAP measures more prominently.

We believe that EBITDA and adjusted EBITDA facilitate operating performance comparisons from period to period, by isolating the effects of some items that vary (i) widely among similar companies or (ii) from period to period without correlating to core operating performance. Such variances can be caused by (i) capital structure differences, affecting interest expense, (ii) tax differences, including different tax rates or net operating loss positions, and (iii) book asset age and basis, affecting depreciation and amortization. We also present EBITDA and adjusted EBITDA because (i) we believe that they are frequently used by securities analysts and investors, (i) we believe that they are useful in assessing our ability to incur and service indebtedness, and (iii) we use EBITDA and adjusted EBITDA internally as peer benchmarks.

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The following table reconciles the non-GAAP adjustments of EBITDA and adjusted EBITDA to net income.

(Amounts in thousands)	Thirteen Weeks Ended		Twenty-Six Weeks Ended	
	June 25, 2014	June 26, 2013	June 25, 2014	June 26, 2013
<b>Net income</b>	<b>\$ 6,569</b>	<b>\$ 410</b>	<b>\$ 12,039</b>	<b>\$ 350</b>
Provision for income taxes	570	1,971	987	2,135
Interest expense, net	5,703	9,800	11,326	19,580
Depreciation and amortization	2,752	2,541	5,347	4,945
<b>EBITDA</b>	<b>\$ 15,594</b>	<b>\$ 14,722</b>	<b>\$ 29,699</b>	<b>\$ 27,010</b>
Stock based compensation expense <sup>(1)</sup>	169	30	338	115
Management fees <sup>(2)</sup>	134	169	292	324
Loss on disposal of assets <sup>(3)</sup>	215	391	491	581
Impairment and closures <sup>(4)</sup>	340	36	393	101
Pre-opening costs <sup>(5)</sup>	103	43	211	147
<b>Adjusted EBITDA</b>	<b>\$ 16,555</b>	<b>\$ 15,391</b>	<b>\$ 31,424</b>	<b>\$ 28,278</b>

(1) Includes non-cash, stock-based compensation.

(2) Includes management fees and other out-of-pocket costs paid to affiliates of Trimaran Capital LLC and Freeman Spogli & Co.

(3) Loss on disposal of assets includes losses from retirement, replacement, or write-off of equipment and leasehold improvements.

(4) Includes costs related to impairment of long-lived assets and closing restaurants.

(5) Pre-opening costs are a component of general and administrative expenses, and consist of costs directly associated with the opening of new restaurants and incurred prior to opening, including management labor costs, staff labor costs during training, food and supplies used during training, marketing costs, and other related pre-opening costs. These are generally incurred over the three to five months prior to opening. Pre-opening costs also include occupancy costs incurred between the taking of possession, and the opening, of a restaurant.

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**Comparison of Results of Operations for the Thirteen and Twenty-Six Weeks Ended June 25, 2014, and June 26, 2013**

Our operating results for the thirteen weeks ended June 25, 2014, and June 26, 2013, in absolute terms, and expressed as percentages of revenue, are compared below.

Statement of Operations Data	Thirteen Weeks Ended					
	June 25, 2014		June 26, 2013		Increase / (Decrease)	
	(\$ ,000)	(%)	(\$ ,000)	(%)	(\$ ,000)	(%)
Company-operated restaurant revenue	\$81,358	93.6	\$76,520	93.6	\$ 4,838	6.3
Franchise revenue	5,546	6.4	5,207	6.4	339	6.5
<b>Total revenue</b>	<b>86,904</b>	<b>100.0</b>	<b>81,727</b>	<b>100.0</b>	<b>5,177</b>	<b>6.3</b>
Food and paper costs <sup>(1)</sup>	25,930	31.9	24,207	31.6	1,723	7.1
Labor and related expenses <sup>(1)</sup>	20,102	24.7	19,218	25.1	884	4.6
Occupancy and other operating expenses <sup>(1)</sup>	16,945	20.8	15,874	20.7	1,071	6.7
<b>Company restaurant expenses<sup>(1)</sup></b>	<b>62,977</b>	<b>77.4</b>	<b>59,299</b>	<b>77.5</b>	<b>3,678</b>	<b>6.2</b>
General and administrative expenses	6,835	7.9	6,298	7.7	537	8.5
Franchise expenses	943	1.1	981	1.2	(38)	(3.9)
Depreciation and amortization	2,752	3.2	2,541	3.1	211	8.3
Loss on disposal of assets	215	0.2	391	0.5	(176)	(45.0)
Asset impairment and close-store reserves	340	0.4	36	0.0	304	844.4
<b>Total expenses</b>	<b>74,062</b>	<b>85.2</b>	<b>69,546</b>	<b>85.1</b>	<b>4,516</b>	<b>6.5</b>
<b>Income from operations</b>	<b>12,842</b>	<b>14.8</b>	<b>12,181</b>	<b>14.9</b>	<b>661</b>	<b>5.4</b>
Interest expense, net	5,703	6.6	9,800	12.0	(4,097)	(41.8)
<b>Income before provision for income taxes</b>	<b>7,139</b>	<b>8.2</b>	<b>2,381</b>	<b>2.9</b>	<b>4,758</b>	<b>199.8</b>
Provision for income taxes	(570)	(0.7)	(1,971)	(2.4)	(1,401)	(71.1)
<b>Net income</b>	<b>\$ 6,569</b>	<b>7.6</b>	<b>\$ 410</b>	<b>0.5</b>	<b>\$ 6,159</b>	<b>1,502.2</b>

(1) Percentages for line items relating to the cost of operations are calculated with company-operated restaurant revenue as the denominator. All other percentages use total revenue.

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Our operating results for the twenty-six weeks ended June 25, 2014, and June 26, 2013, in absolute terms, and expressed as percentages of revenue, are compared below.

Statement of Operations Data	Twenty-Six Weeks Ended					
	June 25, 2014		June 26, 2013		Increase / (Decrease)	
	(\$,000)	(%)	(\$,000)	(%)	(\$,000)	(%)
Company-operated restaurant revenue	\$157,571	93.6	\$148,589	93.6	\$ 8,982	6.0
Franchise revenue	10,760	6.4	10,133	6.4	627	6.2
<b>Total revenue</b>	<b>168,331</b>	<b>100.0</b>	<b>158,722</b>	<b>100.0</b>	<b>9,609</b>	<b>6.1</b>
Food and paper costs <sup>(1)</sup>	49,953	31.7	46,903	31.6	3,050	6.5
Labor and related expenses <sup>(1)</sup>	39,415	25.0	38,288	25.8	1,127	2.9
Occupancy and other operating expenses <sup>(1)</sup>	32,989	20.9	31,398	21.1	1,591	5.1
<b>Company restaurant expenses<sup>(1)</sup></b>	<b>122,357</b>	<b>77.7</b>	<b>116,589</b>	<b>78.5</b>	<b>5,768</b>	<b>4.9</b>
General and administrative expenses	13,465	8.0	12,491	7.9	974	7.8
Franchise expenses	1,926	1.1	1,950	1.2	(24)	(1.2)
Depreciation and amortization	5,347	3.2	4,945	3.1	402	8.1
Loss on disposal of assets	491	0.3	581	0.4	(90)	(15.5)
Asset impairment and close-store reserves	393	0.2	101	0.1	292	289.1
<b>Total expenses</b>	<b>143,979</b>	<b>85.5</b>	<b>136,657</b>	<b>86.1</b>	<b>7,322</b>	<b>5.4</b>
<b>Income from operations</b>	<b>24,352</b>	<b>14.5</b>	<b>22,065</b>	<b>13.9</b>	<b>2,287</b>	<b>10.4</b>
Interest expense, net	11,326	6.7	19,580	12.3	(8,254)	(42.2)
<b>Income before provision for income taxes</b>	<b>13,026</b>	<b>7.7</b>	<b>2,485</b>	<b>1.6</b>	<b>10,541</b>	<b>424.4</b>
Provision for income taxes	(987)	(0.6)	(2,135)	(1.3)	(1,148)	(53.8)
<b>Net income</b>	<b>\$ 12,039</b>	<b>7.2</b>	<b>\$ 350</b>	<b>0.2</b>	<b>\$11,689</b>	<b>3339.7</b>

(1) Percentages for line items relating to the cost of operations are calculated with company-operated restaurant revenue as the denominator. All other percentages use total revenue.

### Company-Operated Restaurant Revenue

For the quarter, company-operated restaurant revenue increased \$4.8 million, or 6.3%, due primarily to an increase in company-operated comparable restaurant sales of \$3.1 million, or 5.0%. The growth in company-operated comparable restaurant sales was due primarily to an increase in average check size of 2.8% and an increase in traffic of 2.2% year-over-year. Company-operated restaurant revenue was also favorably impacted by \$1.3 million of additional sales from new restaurants not in the comparable base. The increase was partially offset by \$0.2 million of lost sales from closed restaurants.

Year-to-date, company-operated restaurant revenue increased \$9.0 million, or 6.0%, due primarily to an increase in company-operated comparable restaurant sales of \$6.2 million, or 5.2%. The growth in company-operated comparable restaurant sales was due primarily to an increase in average check size of 3.3% and an increase in traffic of 1.8% year-over-year. Company-operated restaurant revenue was also favorably impacted by \$2.3 million of additional sales from new restaurants not in the comparable base. The increase was partially offset by \$0.8 million of lost sales from closed restaurants.

### Franchise Revenue

For the quarter, franchise revenue increased \$0.3 million, or 6.5%. Year-to-date, it increased \$0.6 million, or 6.2%. These increases were due primarily to increases in franchised comparable restaurant sales of 5.9% and 7.1%, respectively.

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***Food and Paper Costs***

For the quarter, food and paper costs increased \$1.7 million, or 7.1%, due to a \$1.5 million increase in food costs and a \$0.2 million increase in paper costs. Year-to-date, food and paper costs increased \$3.1 million, or 6.5%, due to a \$2.7 million increase in food costs and a \$0.4 million increase in paper costs. These increases were due primarily to higher revenue and to higher commodity costs.

For the quarter, food and paper costs as a percentage of company-operated restaurant revenue were 31.9%, compared to 31.6% in the prior year. Year-to-date, they were 31.7%, compared to 31.6% in the prior year. These increases were due primarily to higher commodity costs, but were partially offset by increases in average check size, due to menu price increases in the fourth quarter of 2013.

***Labor and Related Expenses***

Payroll and benefit expenses increased \$0.9 million, or 4.6%, for the quarter, and \$1.1 million, or 2.9%, year-to-date, year-over-year. These increases were due primarily to increased labor costs resulting from higher sales.

For the quarter, payroll and benefit expenses as a percentage of company-operated restaurant revenue were 24.7%, compared to 25.1% in the prior year. Year-to-date, they were 25.0%, compared to 25.8% in the prior year. These decreases were due primarily to increased revenue and relatively fixed labor expenses.

***Occupancy and Other Operating Expenses***

Occupancy and other operating expenses increased \$1.1 million, or 6.7%, for the quarter, and \$1.6 million, or 5.1%, year-to-date, year-over-year. These increases for the quarter and year-to-date periods were due primarily to (i) a \$0.3 million and \$0.6 million increase in utility costs, due primarily to higher gas and electric costs, (ii) a \$0.4 million and \$0.6 million increase in advertising costs, due to additional advertising contributions in the Los Angeles market in the second quarter of 2014, and (iii) a \$0.2 million increase, for the quarter and year-to-date periods, in general liability costs, due to higher claims activity, respectively.

For the quarter, occupancy and other operating expenses as a percentage of company-operated restaurant revenue were 20.8%, compared to 20.7% in the prior year. Year-to-date, they were 20.9%, compared to 21.1% in the prior year. The year-to-date decrease was due primarily to increased revenue, partially offset by the higher costs noted above.

***General and Administrative Expenses***

General and administrative expenses increased \$0.5 million, or 8.5%, for the quarter, and \$1.0 million, or 7.8%, year-to-date, year-over-year. These increases were due primarily to increased payroll expense, stock option expense, and professional fees. Increased payroll expense was due primarily to an increase in corporate employees, partially offset by (i) absence of severance costs attributable to a managerial departure in 2013 and (ii) lower medical costs, due primarily to lower medical claims activity. Increases in stock option expense of \$0.1 million and \$0.2 million, respectively, were due primarily to (i) the issuance of new stock options and (ii) the reversal of stock option expense in 2013 due to a managerial departure. Increased professional fees were due to costs incurred for our IPO. Both for the quarter and year-to-date, increases in general and administrative expenses were partially offset by decreases in legal costs, due to lower legal claims activity.

For the quarter, general and administrative expenses as a percentage of total revenue were 7.9%, compared to 7.7% in the prior year. Year-to-date, they were 8.0%, compared to 7.9% in the prior year. These increases were due primarily to the higher costs noted above, partially offset by increased revenue.

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[Table of Contents](#)**Interest Expense, Net**

Interest expense, net, decreased \$4.1 million for the quarter and \$8.3 million year-to-date, year-over-year. These decreases were due primarily to a reduction in interest rates on our debt, due to the 2013 Refinancing. Our current credit facilities carry longer maturities and lower interest rates than the indebtedness that they replaced.

**Provision for Income Taxes**

Year-over-year, for the quarter, we recorded an income tax provision of \$0.6 million, compared to \$2.0 million in 2013. Year-to-date, we recorded an income tax provision of \$1.0 million, compared to \$2.1 million in 2013. Our provisions for income taxes relate primarily to the effects of (i) changes in our deferred taxes and (ii) maintaining full valuation allowances against certain deferred tax assets as of June 25, 2014, and June 26, 2013.

**Liquidity and Capital Resources**

Our primary sources of liquidity and capital resources have been (i) our cash and cash equivalents on hand, (ii) cash from operations, and (iii) borrowings under our credit facilities. In addition, on July 30, 2014, we closed our IPO, bringing in net proceeds after expenses of \$112.8 million, the majority of which were used to repay our \$100 million Second Lien Term Loan. Our primary uses of liquidity and capital resources have been (i) new restaurants, (ii) existing restaurant capital investments, including remodelings and maintenance, (iii) principal and interest payments on our debt, (iv) lease obligations and (v) working capital and general corporate needs. Our working capital requirements are not significant, since our customers pay for their purchases in cash or by credit or debit card at the time of sale. Therefore, we are able to sell much of our inventory before we have to pay our suppliers. Our restaurants do not require significant inventories or receivables. We believe that our present sources of liquidity and capital resources will be sufficient to finance our continued operations and our expansion plans for at least the next twelve months.

On October 11, 2013, we refinanced our \$12.5 million first lien revolving credit facility, \$170 million first lien term loan, and \$105 million 17% second priority senior secured notes, by entering into the First Lien Credit Agreement and the Second Lien Credit Agreement. The facilities under these agreements carried longer maturities and lower interest rates than the facilities that they replaced.

The 2013 Refinancing lowered our interest expense by an estimated \$17.8 million per annum, or 49% of our \$36.3 million of interest expense for fiscal 2013. By paying off our Second Lien Term Loan, our IPO will reduce our annualized interest expense by approximately \$10.1 million, which would have represented a reduction of approximately 27.8% of our \$36.3 million of interest expense for fiscal 2013.

The following table presents summary cash flow information for the periods indicated.

<b>(Amounts in thousands)</b>	<b>Twenty-Six Weeks Ended</b>	
	<b>June 25, 2014</b>	<b>June 26, 2013</b>
<b>Net cash provided by (used in)</b>		
Operating activities	\$ 21,591	\$ 10,510
Investing activities	(10,391)	(7,415)
Financing activities	(1,081)	(960)
<b>Net increase in cash</b>	<b>\$ 10,119</b>	<b>\$ 2,135</b>

**Operating Activities**

Year-to-date, net cash provided by operating activities increased by \$11.1 million, year-over-year, due primarily to (i) increased revenue, due to company-operated comparable restaurant sales growth, and (ii) lower interest payments, due to the 2013 Refinancing, which resulted in lower interest rates on our debt and required payment of accrued interest in October 2013 rather than in early 2014.



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### ***Investing Activities***

Year-to-date, net cash used in investing activities increased by \$3.0 million, year-over-year, due primarily to increased capital expenditures related to new restaurants and remodeling of existing restaurants.

### ***Financing Activities***

Year-to-date, net cash used in financing activities increased by \$0.1 million, year-over-year, due primarily to larger principal payments for our \$190 million First Lien Term Loan than for our former \$170 million first lien term loan, repaid as part of the 2013 Refinancing.

### ***Debt and Other Obligations***

#### ***Senior Secured Credit Facilities***

On October 11, 2013, EPL entered into (i) the First Lien Credit Agreement, with Intermediate as guarantor, Jefferies Finance LLC as administrative agent and collateral agent, General Electric Capital Corporation as issuing bank and swing line lender, Golub Capital LLC as syndication agent, and with various lenders, and (ii) the Second Lien Credit Agreement, with Intermediate as guarantor, Jefferies Finance LLC as administrative agent and collateral agent, and with various lenders.

The First Lien Credit Agreement provides for our \$15 million Revolver, including obligations in respect of revolving loans, swing line loans and letters of credit, and our \$190 million First Lien Term Loan. Loans under the First Lien Credit Agreement bear interest, at EPL's option, at LIBOR or an Alternate Base Rate, plus an applicable margin of 4.25% with respect to LIBOR and 3.25% with respect to the Alternate Base Rate, with a 1.00% floor with respect to LIBOR. The Revolver and the First Lien Term Loan are secured by a first priority lien on substantially all of the assets of EPL and Intermediate. The Revolver and First Lien Term Loan mature on October 11, 2018. At June 25, 2014, under the Revolver, EPL had \$7.3 million in letters of credit outstanding and \$7.7 million available for borrowing.

The Second Lien Credit Agreement provided for our \$100 million Second Lien Term Loan. We repaid the Second Lien Term Loan in the third quarter of 2014 with proceeds from our IPO.

The First Lien Credit Agreement contains a number of covenants that, among other things, restrict, subject to certain exceptions, EPL's ability to (i) incur additional indebtedness, (ii) issue preferred stock, (iii) create liens on assets, (iv) engage in mergers or consolidations, (v) sell assets, (vi) make investments, loans or advances, (vii) make certain acquisitions, (viii) engage in certain transactions with affiliates, (ix) authorize or pay dividends, and (x) change its lines of business or fiscal year. In addition, the First Lien Credit Agreement requires EPL (i) to maintain, on a consolidated basis, a minimum interest coverage ratio, and (ii) not to exceed a maximum total leverage ratio. As of June 25, 2014, we were in compliance with all financial covenants.

On July 9, 2014, we agreed with our lenders to amend the terms of the First Lien Credit Agreement (i) to remove restrictions on capital expenditures and (ii) to permit special dividend payments of up to \$11.0 million per fiscal year, not to exceed \$33.0 million in the aggregate, for our income tax receivable agreement. These provisions became operative upon the repayment in full of the Second Lien Term Loan.

#### ***Hedging Arrangements***

In connection with our credit agreements, we entered into two interest rate caps with Wells Fargo Bank, N.A. The first has a notional amount of \$30 million, a rate cap of 3.00%, based on 1-month USD LIBOR, and terminates on December 1, 2015. The second has a notional amount of \$120 million, a rate cap of 3.00%, based on 1-month USD LIBOR, and terminates on December 1, 2016.

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### *Contractual Obligations*

Our contractual commitments outstanding on June 25, 2014, have not changed materially since our prospectus of July 24, 2014. These relate to (i) future debt payments, including expected interest expense, calculated based on current interest rates, (ii) restaurant operating lease payments, and (iii) other obligations.

### *Off-Balance Sheet and Other Arrangements*

As of June 25, 2014, we were using \$7.7 million of Revolver borrowing capacity as collateral to secure outstanding letters of credit.

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

### **Interest Rate Risk**

We are exposed to market risk from changes in interest rates on our debt, which bears interest at variable rates and has a USD LIBOR floor of 1.00%. At June 25, 2014, we had outstanding borrowings of \$288.3 million and another \$7.3 million of letters of credit in support of our insurance programs. A 1.00% increase in the effective interest rate applied to these borrowings would result in a pre-tax interest expense increase of \$3.0 million on an annualized basis.

We manage our interest rate risk through normal operating and financing activities and, when determined appropriate, through the use of derivative financial instruments.

To mitigate exposure to fluctuations in interest rates, we entered into two interest rate caps as discussed above under “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Debt and Other Obligations—Hedging Arrangements”.

### **Inflation**

Inflation has an impact on food, paper, construction, utility, labor and benefits, general and administrative and other costs, all of which can materially impact our operations. We have a substantial number of hourly employees who are paid wage rates at or based on the applicable federal or state minimum wage and increases in the minimum wage will increase our labor costs. The State of California (where most of our restaurants are located) has a minimum wage, which was \$8.00 per hour from January 1, 2008, to June 30, 2014. Since July 1, 2014, it has been \$9.00, and on January 1, 2016, it is scheduled to rise to \$10.00. In general, we have been able to substantially offset costs increases resulting from inflation by increasing menu prices, managing menu mix, improving productivity or through other adjustments. We may or may not be able to offset cost increases in the future.

## **Item 4. Controls and Procedures.**

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

Our management establishes and maintains disclosure controls and procedures (as defined in Exchange Act Rules 13a–15(e) and 15d–15(e)) to ensure that the information we disclose under the Exchange Act is properly and timely reported. We provide this information to our chief executive and chief financial officers as appropriate to allow for timely decisions.

Our controls and procedures are based on assumptions. Additionally, even effective controls and procedures only provide reasonable assurance of achieving their objectives. Accordingly, we cannot guarantee that our controls and procedures will succeed or be adhered to in all circumstances.

We have evaluated our disclosure controls and procedures, with the participation, and under the supervision, of our management, including our chief executive and chief financial officers. Based on this evaluation, our chief executive and chief financial officers have concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

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**Changes in Internal Control over Financial Reporting**

No change in our internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) occurred during the period covered by this report that has affected or is reasonably likely to affect materially our internal control over financial reporting.

## PART II—OTHER INFORMATION

### Item 1. Legal Proceedings.

Around February 24, 2014, a former employee filed a class action in the Superior Court of the State of California, County of Orange, against EPL on behalf of all putative class members (all hourly employees from 2010 to the present) alleging certain violations of California labor laws, including failure to pay overtime compensation, failure to provide meal periods and rest breaks, and failure to provide itemized wage statements. The putative lead plaintiff's requested remedies included compensatory and punitive damages, injunctive relief, disgorgement of profits, and reasonable attorneys' fees and costs. No specific amount of damages sought was specified in the complaint. We were served with the complaint on March 3, 2014. While we intend to vigorously defend against this action, including its class certification, its ultimate outcome is presently not determinable, as it is in a preliminary phase. Thus, we cannot determine the likelihood of an adverse judgment nor a likely range of damages, if any. A settlement or adverse judgment could have a material adverse impact.

We are involved in various claims and legal actions that arise in the ordinary course of business. We do not believe that the ultimate resolution of these actions will have a material adverse effect on our financial position, results of operations, liquidity, or capital resources. A significant increase in the number of claims or an increase in amounts payable under successful claims could materially adversely affect our business, financial condition, results of operations or cash flows.

### Item 1A. Risk Factors.

There have been no material changes from the risk factors previously disclosed in our prospectus of July 24, 2014.

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

#### Use of Proceeds from Initial Public Offering of Common Stock

On July 24, 2014, we priced the initial public offering of our common stock, par value \$0.01 per share, pursuant to a registration statement, file number 333-197001, that was declared effective by the SEC on July 24, 2014. The offering closed on July 30, 2014. Jefferies LLC and Morgan Stanley & Co. LLC were the managing underwriters.

We registered and sold 8,214,286 shares, including 7,142,857 pursuant to a firm commitment and 1,071,429 pursuant to the underwriters' option to purchase additional shares. All shares were newly issued, and we received all net sales proceeds. With a price per share to the public of \$15.00, gross proceeds were \$123.2 million. Proceeds, net of underwriting discounts and commissions of \$8.6 million, were \$114.6 million. Based on estimated fees and expenses relating to the sale and distribution of the offered shares of \$1.8 million, as set forth in our registration statement, net proceeds were an estimated \$112.8 million. We used an estimated \$101.5 million of these proceeds to repay in whole our \$100 million Second Lien Term Loan, including an estimated \$1.5 million in prepayment penalties and fees. We are using the balance of the proceeds for general corporate purposes and to support our expansion plans, including as capital for development of new restaurants, capital for remodeling of existing restaurants, and working capital.

Other than underwriting discounts and commissions, our expenses were predominantly incurred prior to the effectiveness of the registration statement. Otherwise, we have not incurred material issuance and distribution expenses since the effective date of the registration statement.

We did not pay any of the proceeds of the offering, or the expenses thereto, directly or indirectly, to our directors or officers, to any person owning 10% or more of any class of our equity securities, to any associate of any of the foregoing, or to any of our affiliates.

### Item 3. Defaults Upon Senior Securities.

None.

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**Item 4. Mine Safety Disclosures.**

None.

**Item 5. Other Information.**

None.

**Item 6. Exhibits.**

XBRL interactive data file documents will be furnished by amendment within 30 days of the filing date of this report, as permitted by Rule 405(a)(2)(ii) of Regulation S-T (17 C.F.R. § 232.405).

**Exhibit Index**

<u>Number</u>	<u>Description</u>
3.1	Amended and Restated Certificate of Incorporation of El Pollo Loco Holdings, Inc.
3.2	Amended and Restated By-Laws of El Pollo Loco Holdings, Inc.
31.1	Certification of Principal Executive Officer under section 302 of the Sarbanes–Oxley Act of 2002
31.2	Certification of Principal Financial Officer under section 302 of the Sarbanes–Oxley Act of 2002
32.1*	Certification of Chief Executive Officer and Chief Financial Officer under 18 U.S.C. section 1350, adopted by section 906 of the Sarbanes–Oxley Act of 2002

\* Pursuant to Item 601(b)(32)(ii) of Regulation S-K (17 C.F.R. § 229.601(b)(32)(ii)), this certification is deemed furnished, not filed, for purposes of section 18 of the Exchange Act, nor is it otherwise subject to liability under that section. It will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except if the registrant specifically incorporates it by reference.

**SIGNATURES**

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

El Pollo Loco Holdings, Inc.

(Registrant)

September 4, 2014  
Date

/s/ Stephen J. Sather

Stephen J. Sather  
President and Chief Executive Officer

September 4, 2014  
Date

/s/ Laurance Roberts

Laurance Roberts  
Chief Financial Officer

## AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

EL POLLO LOCO HOLDINGS, INC.

The undersigned, Stephen J. Sather, certifies that he is the Chief Executive Officer, President and Director of El Pollo Loco Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), and does hereby further certify as follows:

(1) The name of the Corporation is El Pollo Loco Holdings, Inc.

(2) The name under which the Corporation was originally incorporated was EP Acquisition Corp. and the original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 13, 2005. The original Certificate of Incorporation was amended on (i) September 22, 2005, by filing a certificate of amendment with the Secretary of State of the State of Delaware, (ii) December 1, 2005, by filing a certificate of correction with the Secretary of State of the State of Delaware, (iii) December 6, 2005, by filing a restated certificate of incorporation with the Secretary of State of the State of Delaware, (iv) July 6, 2007, by filing a certificate of change of registered agent with the Secretary of State of the State of Delaware, (v) April 22, 2014, by filing a certificate of ownership and merger with the Secretary of State of the State of Delaware and (vi) July 14, 2014, by filing a certificate of amendment with the Secretary of State of the State of Delaware (collectively, the "Original Certificate of Incorporation"). Pursuant to the certificate of amendment filed on September 22, 2005, the Corporation changed its name to Chicken Acquisition Corp. Pursuant to the certificate of ownership and merger filed on April 22, 2014, the Corporation changed its name to El Pollo Loco Holdings, Inc.

(3) In lieu of a meeting of the Board of Directors of the Corporation (the "Board of Directors"), the Board of Directors has, by unanimous written consent dated July 21, 2014, authorized the amendment and restatement of the Corporation's Original Certificate of Incorporation as set forth herein in accordance with the provisions of Sections 141(f), 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL"). In lieu of a meeting of the stockholders of the Corporation, the Corporation's

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stockholders have, by written consent dated July 21, 2014, approved the amendment and restatement of the Corporation's Original Certificate of Incorporation as set forth herein in accordance with the provisions of Section 228 of the DGCL, and such consent has been filed with the minutes of the proceedings of stockholders of the Corporation.

(4) This Amended and Restated Certificate of Incorporation restates and integrates and further amends the Original Certificate of Incorporation, as heretofore amended or supplemented.

The text of the Original Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the Corporation is El Pollo Loco Holdings, Inc. (hereinafter, the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, New Castle County, 19808. The name of its registered agent at that address is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

FOURTH:

- (a) Authorized Capital Stock. The total number of shares of stock which the Corporation shall have authority to issue is 300,000,000 of which the Corporation shall have authority to issue 200,000,000 shares of common stock, each having a par value of one cent per share (\$0.01) (the "Common Stock"), and 100,000,000 shares of preferred stock, each having a par value of one cent per share (\$0.01) (the "Preferred Stock").
- (b) Common Stock. The powers, preferences and rights, and the qualifications, limitations and restrictions, of the Common Stock are as follows:

(1) Each holder of record of shares of Common Stock shall be entitled to one vote for each share of Common Stock held on all matters submitted to a vote of stockholders of the Corporation on which holders of Common Stock are entitled to vote.



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(2) The holders of shares of Common Stock shall not have cumulative voting rights (as defined in Section 214 of the DGCL).

(3) Subject to the rights of the holders of Preferred Stock, and subject to any other provisions of this Amended and Restated Certificate of Incorporation, as it may be amended from time to time, holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, stock or property of the Corporation if, as and when declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

(4) In the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, after payment or provision for the payment of the debt and liabilities of the Corporation and subject to the prior payment in full of the preferential amounts, if any, to which any series of Preferred Stock may be entitled, the holders of shares of Common Stock shall be entitled to receive the assets and funds of the Corporation remaining for distribution in proportion to the number of shares held by them, respectively.

(5) No holder of shares of Common Stock shall be entitled to preemptive or subscription rights.

- (c) Preferred Stock. The Board of Directors is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more classes or series, and to fix for each such class or series such voting powers, full or limited, or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such class or series and as may be permitted by the DGCL, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes of stock or any other series of

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stock; (iii) entitled to such rights upon any liquidation, dissolution or winding-up, whether voluntary or involuntary, of the Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes of stock, or shares of any other series of the same class of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments; all as may be stated in such resolution or resolutions.

- (d) Power to Sell and Purchase Shares. Subject to the requirements of applicable law, the Corporation shall have the power to issue and sell all or any part of any shares of any class of stock herein or hereafter authorized to such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issue or sale of the same number of shares of another class or of shares of another series of such class, and as otherwise permitted by law. Subject to the requirements of applicable law, the Corporation shall have the power to purchase any shares of any class of stock herein or hereafter authorized from such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class or of shares of another series of such class, and as otherwise permitted by law.

FIFTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

- (a) The business and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors. In addition to the powers and authority expressly conferred upon the Board of Directors by applicable law, this Amended and Restated Certificate of Incorporation or the Amended and Restated By-Laws of the Corporation (as amended from time to time, the "By-Laws"), the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the DGCL and this Amended and Restated Certificate of Incorporation.

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- (b) The number of directors of the Corporation shall be fixed from time to time exclusively by resolution of the Board of Directors.
- (c) The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. The initial division of the Board of Directors into classes shall be made by the decision of the affirmative vote of a majority of the entire Board of Directors. The term of the initial Class I directors shall terminate on the date of the 2015 annual meeting of stockholders; the term of the initial Class II directors shall terminate on the date of the 2016 annual meeting of stockholders; and the term of the initial Class III directors shall terminate on the date of the 2017 annual meeting of stockholders. Each director in each class shall hold office until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. At each succeeding annual meeting of stockholders beginning in 2015, successors to the class of directors whose term expires at that annual meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders to be held in the third year following the year of their election, with each director in each such class to hold office until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case will a decrease in the number of directors shorten the term of any incumbent director.
- (d) Subject to the terms of any one or more classes or series of Preferred Stock then outstanding, any vacancy on the Board of Directors that results from (i) removal of a director, (ii) an increase in the number of directors or (iii) death, resignation, disqualification or any other cause, will be filled solely by the affirmative vote of a majority of the remaining directors then in office, even if less than a quorum remains, including by a sole remaining director. Any director of any class elected to fill a vacancy resulting from an increase in the number of directors of such class shall hold office for a term that shall coincide with the remaining term of that class. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor. The right of stockholders to fill vacancies on the Board of Directors is hereby specifically denied.

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- (e) Notwithstanding the foregoing, the election, term, removal and filling of vacancies with respect to directors, if any, elected separately by the holders of one or more classes or series of Preferred Stock shall not be governed by this Article FIFTH, but rather shall be as provided for in the resolutions adopted by the Board of Directors creating and establishing such class or series of Preferred Stock.
  - (f) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the DGCL and this Amended and Restated Certificate of Incorporation.

SIXTH: No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of any fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL. If the DGCL is amended hereafter to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent authorized by the DGCL, as so amended. Any repeal or modification of this Article SIXTH shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

SEVENTH: The Corporation shall indemnify any person that is or was a director or officer (and any person that is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation (or such other corporation, partnership, joint venture, trust or other enterprise) and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such

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person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Article SEVENTH shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article SEVENTH.

The rights to indemnification and to the advance of expenses conferred in this Article SEVENTH shall not be exclusive of any other right which any person may have or hereafter acquire under this Amended and Restated Certificate of Incorporation, the By-Laws, any statute or other law, by agreement, vote of stockholders or approval of the directors of the Corporation or otherwise.

Any repeal or modification of this Article SEVENTH shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

EIGHTH. Prior to the first date on which Trimaran Pollo Partners, L.L.C., a Delaware limited liability company (the "Sponsor Holder") ceases to beneficially own (directly or indirectly) at least forty percent (40%) of the votes entitled to be cast by the shares of the then outstanding capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), any action that, under the DGCL, may be taken at a duly called meeting of the stockholders of the Corporation may instead be taken without holding such a meeting by one or more consents in writing or by electronic submission, setting forth the action so taken or to be taken, signed by holders of Voting Stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. From and after the date the Sponsor Holder ceases to beneficially own (directly or indirectly) at least forty percent (40%) of the Voting Stock, any action required or permitted to be taken by the stockholders of the Corporation may be effected only at a duly called annual or special meeting of the stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

If the Sponsor Holder beneficially owns, directly or indirectly, more than 40% of the Voting Stock, any director or the entire Board of Directors may be

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removed from office at any time, with or without cause, by the affirmative vote of the holders of a majority of the Voting Stock. Otherwise, any director or the entire Board of Directors may only be removed for cause, and only by the affirmative vote of the holders of a majority of the Voting Stock, voting at a duly called meeting of stockholders. The vacancy or vacancies in the Board of Directors caused by any such removal shall be filled as provided in Part (d) of Article FIFTH.

NINTH: Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws.

TENTH: Except as otherwise required by law, special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called at any time only (i) by the Chairman of the Board of Directors, (ii) by the Chief Executive Officer (or, in the absence of a Chief Executive Officer, the President) of the Corporation (iii) pursuant to a resolution duly adopted by a majority of the Board of Directors or (iv) prior to the date that the Sponsor Holder ceases to beneficially own (directly or indirectly) forty percent (40%) or more of the Voting Stock, by the Secretary of the Corporation at the request of the holders of shares representing at least forty percent (40%) of the Voting Stock. Other than as set forth in clause (iv) of the preceding sentence, any power of the stockholders to call a special meeting of stockholders is hereby specifically denied. Advance notice of stockholder nominations for the election of directors of the Corporation and of business to be brought by stockholders before any meeting of stockholders of the Corporation shall be given in the manner provided in the By-Laws. No business other than that stated in the notice of such meeting (or any amendment or supplement thereto), which notice, in the case of a special meeting called by a stockholder or stockholders, shall include all business requested by such stockholder or stockholders to be transacted at such meeting, shall be transacted at any special meeting.

ELEVENTH:

(a) The Corporation hereby elects not to be governed by Section 203 of the DGCL, as now in effect or hereafter amended, or any successor statute thereto (the "Delaware Takeover Statute") until such time as an Ownership Triggering Event (as defined below) occurs whereupon the Corporation will, after the occurrence of the Ownership Triggering Event, be governed by the Delaware Takeover Statute.

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(b) An “Ownership Triggering Event” shall have occurred when (i)(A) the Sponsor Holder ceases to Own (as defined below) shares of Sponsor Stock (as defined below) that represent 15% or more of the outstanding shares of Common Stock and (B) no Sponsor-Related Holder (as defined below) has filed a document (on or before the tenth day following the date that the Sponsor Holder ceases to Own shares of Sponsor Stock that represent 15% or more of the outstanding shares of Common Stock) pursuant to the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), that includes a statement (whether or not such statement is required by the Exchange Act) that such Sponsor-Related Holder Owns shares of Sponsor Stock that represent 15% or more of the outstanding shares of Common Stock, or (ii) at such time that (A) the Sponsor Holder has ceased to Own Sponsor Stock that represents 15% or more of the outstanding shares of Common Stock and (B) no Sponsor-Related Holder Owns shares of Sponsor Stock that represent 15% or more of the outstanding shares of Common Stock.

(c) For purposes of this Article ELEVENTH, (i) “Sponsor Stock” means Common Stock which is Owned by the Sponsor Holder immediately following the closing of the initial public offering of Common Stock by the Corporation, (ii) “Own” has the meaning ascribed to such term in the Delaware Takeover Statute, and (iii) “Sponsor-Related Holder” means any person or entity who is a direct or indirect transferee of Sponsor Stock by the Sponsor Holder, as well as any “group” (within the meaning of Rule 13d-5 of the Exchange Act) that includes any of the foregoing persons or entities, provided a Sponsor-Related Holder will not include any such transferee that acquires Sponsor Stock pursuant to (A) an underwritten public offering, (B) a sale under Rule 144 under the Securities Act of 1933, as amended, or (C) a distribution by any Sponsor Holder or any direct or indirect transferee to more than 20 persons or entities.

TWELFTH. In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors shall have the power without the assent or vote of the stockholders to adopt, amend, alter or repeal the By-Laws. The affirmative vote of at least a majority of the Board of Directors shall be required to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the affirmative vote of the holders of a majority of the Voting Stock; provided, however, that from and after the date that the Sponsor Holder ceases to beneficially own (directly or indirectly) at least forty percent (40%) of the Voting Stock, the affirmative vote of the holders of at least seventy five percent (75%) of the Voting Stock shall be required to adopt, amend, alter or repeal the By-Laws.

THIRTEENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate

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of Incorporation, in the manner now or hereafter prescribed in the DGCL, and all rights conferred upon stockholders herein are granted subject to such reservation. Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation, and notwithstanding that a lesser percentage may be permitted from time to time by applicable law, from and after the date that the Sponsor Holder ceases to beneficially own (directly or indirectly) at least forty percent (40%) of the Voting Stock, the affirmative vote of the holders of at least seventy five percent (75%) of the Voting Stock (in addition to any other vote that may be required by law) shall be required to amend, alter, change or repeal, or to adopt any provision as part of this Amended and Restated Certificate of Incorporation inconsistent with the purpose and intent of, Articles FIFTH, SIXTH, SEVENTH, EIGHTH, TENTH, ELEVENTH, TWELFTH, THIRTEENTH, FOURTEENTH and FIFTEENTH of this Amended and Restated Certificate of Incorporation.

**FOURTEENTH:**

(a) To the fullest extent permitted by applicable law (including, without limitation, Section 122(17) of the DGCL (or any successor provision)), the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to the Sponsor Holder or any of its officers, directors, employees, agents, shareholders, members, partners, principals, affiliates (other than the Corporation and its subsidiaries) and managers (each, a "Specified Party"), even if the opportunity is one that the Corporation or any of its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if presented the opportunity to do so. Each such Specified Party shall have no duty to communicate or offer such business opportunity to the Corporation or any of its subsidiaries and, to the fullest extent permitted by applicable law, shall not be liable to the Corporation or any of its subsidiaries for breach of any fiduciary or other duty, as a director or officer or controlling stockholder or otherwise, by reason of the fact that such Specified Party pursues or acquires such business opportunity, directs such business opportunity to another person or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or any of its subsidiaries. Notwithstanding the foregoing, a Specified Party who is a director or officer of the Corporation and who is expressly offered a business opportunity solely in his or her capacity as a director or officer of the Corporation (a "Directed Opportunity") shall be obligated to communicate such Directed Opportunity to the Corporation; provided, however, that all of the protections of this Article FOURTEENTH shall otherwise apply to the Specified Parties with respect to such Directed Opportunity, including, without limitation, the ability of the Specified Parties to pursue or acquire such Directed Opportunity or to direct such Directed Opportunity to another person.



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(b) The Specified Parties shall have no duty to refrain from (i) engaging directly or indirectly in the same or similar business activities or lines of business as the Corporation or any of its subsidiaries or (ii) otherwise competing with the Corporation or any of its subsidiaries.

(c) In addition to and notwithstanding the foregoing provisions of this Article FOURTEENTH, a corporate opportunity shall not be deemed to belong to the Corporation if it is a business opportunity that the Corporation is not financially able or contractually permitted or legally able to undertake, or that is, from its nature, not in the line of the Corporation's business or is of no practical advantage to it or that is one in which the Corporation has no interest or reasonable expectancy.

(d) No alteration, amendment or repeal of this Article FOURTEENTH (including the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article FOURTEENTH) shall eliminate or reduce the effect of this Article FOURTEENTH in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article FOURTEENTH, would accrue or arise, prior to such alteration, amendment or repeal. This Article FOURTEENTH shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Amended and Restated Certificate of Incorporation, the By-Laws or applicable law.

(e) Any person or entity purchasing or otherwise acquiring any interest in the shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article FOURTEENTH.

**FIFTEENTH:** The Court of Chancery of the State of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (a) any actual or purported derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director or officer of the Corporation to the Corporation or the Corporation's stockholders or creditors, (c) any action asserting a claim against the Corporation or any director or officer of the Corporation arising pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the By-Laws, or (d) any action asserting a claim against the Corporation or any director or officer of the Corporation governed by the internal affairs doctrine; provided, however, that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state court sitting in the State of Delaware. Any person or entity purchasing or

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otherwise acquiring any interest in the shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article FIFTEENTH.

SIXTEENTH: If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent authorized or permitted by law).

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IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed on its behalf this 24th day of July, 2014.

EL POLLO LOCO HOLDINGS, INC.

By: /s/ Stephen J. Sather

Name: Stephen J. Sather

Title: Chief Executive Officer, President and Director

AMENDED AND RESTATED  
BY-LAWS  
OF  
EL POLLO LOCO HOLDINGS, INC.  
A Delaware Corporation  
Effective July 24, 2014

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AMENDED AND RESTATED  
BY-LAWS  
OF  
EL POLLO LOCO HOLDINGS, INC.  
(hereinafter called the "Corporation")

**ARTICLE I**

**OFFICES**

Section 1. Registered Office. The registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors of the Corporation (the "Board of Directors") may from time to time determine.

**ARTICLE II**

**MEETINGS OF STOCKHOLDERS**

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that a meeting of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication in the manner authorized by the General Corporation Law of the State of Delaware (the "DGCL").

Section 2. Annual Meetings. The annual meeting of stockholders (the "Annual Meeting") for the election of directors shall be held on such date and at such time as shall be designated from time to time by the Board of Directors. Any other proper business may be transacted at the Annual Meeting.

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Section 3. Special Meetings. Unless otherwise required by law, special meetings of the stockholders (a “Special Meeting”), for any purpose or purposes, shall be called in the manner provided by the Certificate of Incorporation of the Corporation, as may be amended or restated from time to time (the “Certificate of Incorporation”). A request to call a Special Meeting shall state the purpose or purposes of the proposed meeting.

Section 4. Nature of Business at Meetings of Stockholders. Only such business (other than nominations for election to the Board of Directors, which must comply with the provisions of Section 5 of this Article II) may be transacted at an Annual Meeting or Special Meeting as is (a) specified in the notice of meeting (or any amendment or supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the Annual Meeting or Special Meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the Annual Meeting or Special Meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 4 of this Article II and on the record date for the determination of stockholders entitled to notice of and to vote at such Annual Meeting or Special Meeting and (ii) who complies with the notice procedures set forth in this Section 4 of this Article II. Notwithstanding the foregoing, at a Special Meeting, only such business shall be conducted as specified in the notice of meeting (or any amendment or supplement thereto).

In addition to any other applicable requirements, for business to be properly brought before an Annual Meeting or a Special Meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation (the “Secretary”).



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To be timely, a stockholder's notice to the Secretary must be delivered to, or be mailed and received at, the principal executive offices of the Corporation (a) in the case of an Annual Meeting, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding Annual Meeting; provided, however, that in the event that the Annual Meeting is called for a date that is not within twenty-five (25) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the Annual Meeting was mailed or such public disclosure of the date of the Annual Meeting was made, whichever first occurs; and (b) in the case of a Special Meeting, no later than the close of business on the tenth (10<sup>th</sup>) day following the day on which notice of the date of the Special Meeting was mailed or public disclosure of the date of the Special Meeting was made, whichever first occurs. In no event shall the adjournment or postponement of an Annual Meeting or Special Meeting, or the public announcement of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

To be in proper written form, a stockholder's notice to the Secretary must set forth the following information: (a) as to each matter such stockholder proposes to bring before the Annual Meeting or Special Meeting, a brief description of the business desired to be brought before the Annual Meeting or Special Meeting (including the specific text of any resolutions or actions proposed for consideration and if such business includes a proposal to amend the Certificate of Incorporation or these By-Laws, the specific language of the proposed amendment)

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and the reasons for conducting such business at the Annual Meeting or Special Meeting, and (b) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is being made, (i) the name and record address of such person as they appear on the Corporation's books, (ii) (A) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person, (B) the name and address of each nominee holder of shares of all stock of the Corporation owned beneficially, but not of record, by such person or any affiliates or associates of such person, and the number of such shares of stock of the Corporation held by each such nominee holder, (C) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation and (D) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation, (iii) a description of all agreements, arrangements, or understandings (whether written or oral) between or among such person, or any affiliates or associates of such person, and any other person or persons (including their names) in connection with the proposal of such business and any material interest of such person or any affiliates or associates of such person, in such business, including any anticipated benefit therefrom to such person, or any

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affiliates or associates of such person, (iv) a representation that the stockholder giving notice intends to appear in person or by proxy at the Annual Meeting or Special Meeting to bring such business before the meeting, and (v) any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies by such person with respect to the proposed business to be brought by such person before the Annual Meeting or a Special Meeting pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder.

A stockholder providing notice of business proposed to be brought before an Annual Meeting or Special Meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 4 of this Article II shall be true and correct as of the record date for determining the stockholders entitled to receive notice of the Annual Meeting or a Special Meeting and such update and supplement shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining the stockholders entitled to receive notice of the Annual Meeting or a Special Meeting.

No business shall be conducted at the Annual Meeting or a Special Meeting except business brought before the Annual Meeting or Special Meeting in accordance with the procedures set forth in this Section 4 of this Article II; provided, however, that, once business has been properly brought before the Annual Meeting or Special Meeting in accordance with such procedures, nothing in this Section 4 of this Article II shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of an Annual Meeting or a

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Special Meeting determines that business was not properly brought before the Annual Meeting or Special Meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

Nothing contained in this Section 4 of this Article II shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act (or any successor provision of law).

Section 5. Nomination of Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation. Nominations of persons for election to the Board of Directors may be made at any Annual Meeting, or at any Special Meeting called for the purpose of electing directors, in either case, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 5 of this Article II and on the record date for the determination of stockholders entitled to notice of and to vote at such Annual Meeting or Special Meeting and (ii) who complies with the notice procedures set forth in this Section 5 of this Article II.

In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary.

To be timely, a stockholder's notice to the Secretary must be delivered to, or be mailed and received at, the principal executive offices of the Corporation (a) in the case of an

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Annual Meeting, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding Annual Meeting; provided, however, that in the event that the Annual Meeting is called for a date that is not within twenty-five (25) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the Annual Meeting was mailed or such public disclosure of the date of the Annual Meeting was made, whichever first occurs; and (b) in the case of a Special Meeting called for the purpose of electing directors, not later than the close of business on the tenth (10th) day following the day on which notice of the date of the Special Meeting was mailed or public disclosure of the date of the Special Meeting was made, whichever first occurs. In no event shall the adjournment or postponement of an Annual Meeting or a Special Meeting called for the purpose of electing directors, or the public announcement of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

To be in proper written form, a stockholder's notice to the Secretary must set forth the following information: (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of such person, (ii) the principal occupation or employment of such person, (iii) (A) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person, (B) the name of each nominee holder of shares of all stock of the Corporation owned beneficially, but not of record, by such person or any affiliates or associates of such person, and the number of such shares of stock of the Corporation held by each such nominee holder, (C) whether and the extent to which any

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derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation and (D) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation, and (iv) any other information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice, and the beneficial owner, if any, on whose behalf the nomination is being made, (i) the name and record address of such person as they appear on the Corporation's books, (ii) (A) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person, (B) the name and address of each nominee holder of shares of all stock of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, and the number of such shares of stock of the Corporation held by each such nominee holder, (C) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to

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stock of the Corporation and (D) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation, (iii) a description of all agreements, arrangements, or understandings (whether written or oral) between or among such person, or any affiliates or associates of such person, and any proposed nominee or any other person or persons (including their names) pursuant to which the nomination(s) are being made by such person, and any material interest of such person, or any affiliates or associates of such person, in such nomination, including any anticipated benefit therefrom to such person, or any affiliates or associates of such person, (iv) a representation that the stockholder giving notice intends to appear in person or by proxy at the Annual Meeting or Special Meeting to nominate the persons named in its notice, and (v) any other information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

A stockholder providing notice of any nomination proposed to be made at an Annual Meeting or Special Meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this

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Section 5 of this Article II shall be true and correct as of the record date for determining the stockholders entitled to receive notice of the Annual Meeting or a Special Meeting, and such update and supplement shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining the stockholders entitled to receive notice of such Annual Meeting or Special Meeting.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 5 of this Article II. If the chairman of an Annual Meeting or a Special Meeting for the election of directors determines that a nomination was not made in accordance with the foregoing procedures, the chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Notwithstanding any provision of this Section 5 of this Article II to the contrary, a nomination of persons for election to the Board of Directors may be submitted for inclusion in the Corporation's proxy materials pursuant to the final rules adopted by the Securities and Exchange Commission (the "SEC") providing for such nominations and inclusion ("final proxy access rules"), and, if such nomination is submitted under the final proxy access rules, such submission (a) in order to be timely, must be delivered to, or be mailed and received by, the Secretary at the principal executive offices of the Corporation no later than 120 calendar days before the date that the Corporation mailed (or otherwise disseminated) its proxy materials for the prior year's Annual Meeting (or such other date as may be set forth in the final proxy access rules for companies without advance notice bylaws); (b) in all other respects, must be made pursuant to, and in accordance with, the terms of the final proxy access rules, as in effect at the



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time of the nomination, or any successor rules or regulations of the SEC then in effect; and (c) must provide the Corporation with any other information required by this Section 5 of this Article II for nominations not made under the final proxy access rules except to the extent that requiring such information to be furnished is prohibited by the final proxy access rules. The provisions of this paragraph of this Section 5 of this Article II do not provide stockholders of the Corporation with any rights, nor impose upon the Corporation any obligations, other than the rights and obligations set forth in the final proxy access rules.

Section 6. Notice. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and, in the case of a Special Meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to notice of and to vote at such meeting.

Section 7. Adjournments. Any meeting of the stockholders may be adjourned from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place, if any, thereof and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting in accordance with the requirements of Section 6 of this Article II shall be given to each stockholder of record entitled to notice of and to vote at the meeting.

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Section 8. Quorum. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, the holders of a majority of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 7 of this Article II, until a quorum shall be present or represented.

Section 9. Voting. Unless otherwise required by law, the Certificate of Incorporation, these By-Laws or any rule of any stock exchange on which the Corporation's shares are listed and traded, any question brought before any meeting of the stockholders, other than the election of directors, shall be decided by the affirmative vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented at the meeting and entitled to vote on such question, voting as a single class. Unless otherwise provided in the Certificate of Incorporation, and subject to Section 12 of this Article II, each stockholder represented at a meeting of the stockholders shall be entitled to cast one (1) vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy as provided in Section 10 of this Article II. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of the stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

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Section 10. Proxies. Each stockholder entitled to vote at a meeting of the stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder as proxy, but no such proxy shall be voted upon after three years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such telegram, cablegram or other electronic transmission, provided that any such telegram, cablegram or other electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such

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telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information on which they relied.

Any copy, facsimile telecommunication or other reliable reproduction of the writing, telegram, cablegram or other electronic transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing, telegram, cablegram or other electronic transmission for any and all purposes for which the original writing, telegram, cablegram or other electronic transmission could be used; provided, however, that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing, telegram, cablegram or other electronic transmission.

Section 11. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation (the "Stock Ledger") shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be

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produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 12. Record Date.

(i) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of the stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of the stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(ii) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which

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record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 13. Stock Ledger. The Stock Ledger shall be the only evidence as to who are the stockholders entitled to examine the Stock Ledger, the list required by Section 11 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of the stockholders.

Section 14. Conduct of Meetings. The Board of Directors may adopt by resolution such rules and regulations for the conduct of any meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of the stockholders shall have

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the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants.

Section 15. Inspectors of Election. In advance of any meeting of the stockholders, the Board of Directors, by resolution, the Chairman or the President shall appoint one or more inspectors to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of the stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by applicable law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath to faithfully execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by applicable law.

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Section 16. No Consent of Stockholders in Lieu of Meeting. The right of the stockholders to act by written consent in lieu of a meeting shall be as set forth in Article EIGHTH of the Certificate of Incorporation.

### **ARTICLE III**

#### **DIRECTORS**

Section 1. Number, Classification, Election and Term of Office. The number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by the Board of Directors and shall be divided in accordance with Article FIFTH of the Certificate of Incorporation. Except as provided in the Certificate of Incorporation and in Section 2 of this Article III, directors shall be elected by a plurality of the votes cast at each Annual Meeting at which a quorum is present. Directors need not be stockholders.

Section 2. Vacancies. Any vacancy in the Board of Directors, however resulting, may be filled only in the manner provided in, and only to the extent permitted under, the Certificate of Incorporation.

Section 3. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders.

Section 4. Meetings. The Board of Directors and any committee thereof may hold meetings, both regular and special, either within or without the State of Delaware. Regular



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meetings of the Board of Directors or any committee thereof may be held without notice (provided that a schedule of meetings referencing the time and place of such meeting shall have been delivered to the Board of Directors not less than three (3) business days prior to such regular meeting) at such time and at such place as may from time to time be determined by the Board of Directors or such committee, respectively. Special meetings of the Board of Directors may be called only in the manner provided in, and only to the extent permitted under, the Certificate of Incorporation. Special meetings of any committee of the Board of Directors may be called by the chairman of such committee, if there be one, by the President, or by any director serving on such committee. Notice thereof stating the place, date and hour of the meeting shall be given to each director (or, in the case of a committee, to each member of such committee) either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone, electronic transmission or telegram on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 5. Organization. At each meeting of the Board of Directors or any committee thereof, the Chairman or the chairman of such committee, as the case may be, or, in his or her absence or if there is no such chairman, a director chosen by a majority of the directors present, shall act as chairman. Except as provided below, the Secretary shall act as secretary at each meeting of the Board of Directors and of each committee thereof. In case the Secretary shall be absent from any meeting of the Board of Directors or any committee thereof, an Assistant Secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all the Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting. Notwithstanding the foregoing, the

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members of each committee of the Board of Directors may appoint any person to act as Secretary of any meeting of such committee and the Secretary or any Assistant Secretary of the Corporation may, but need not if such committee so elects, serve in such capacity.

Section 6. Resignations and Removals of Directors. Any director of the Corporation may resign from the Board of Directors or any committee thereof at any time, by giving notice in writing or by electronic transmission to the Chairman, if there be one, the President or the Secretary and, in the case of a committee, to the chairman of such committee, if there be one. Such resignation shall take effect at the time therein specified or, if no time is specified, immediately; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Any director may be removed only in the manner provided in, and only to the extent permitted under, the Certificate of Incorporation. Any director serving on a committee of the Board of Directors may be removed from such committee at any time by the Board of Directors.

Section 7. Quorum. Except as otherwise required by law, the Certificate of Incorporation or the rules and regulations of any securities exchange or quotation system on which the Corporation's securities are listed or quoted for trading, at all meetings of the Board of Directors or any committee thereof, a majority of the entire Board of Directors or a majority of the directors constituting such committee, as the case may be, shall constitute a quorum for the transaction of business and the act of a majority of the directors or committee members present at any meeting at which there is a quorum shall be the act of the Board of Directors or such committee, as applicable. If a quorum shall not be present at any meeting of the Board of Directors or any committee thereof, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

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Section 8. Actions of the Board of Directors by Written Consent. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting, if all the members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 9. Meetings by Means of Conference Telephone. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 9 of this Article III shall constitute presence in person at such meeting.

Section 10. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each member of a committee must meet the requirements for membership, if any, imposed by applicable law and the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace

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any absent or disqualified member at any meeting of any such committee. Subject to the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading, in the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another qualified member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 11. Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for service as committee members.

Section 12. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable

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solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

#### **ARTICLE IV**

##### **OFFICERS**

Section 1. General. The officers of the Corporation shall be chosen by the Board of Directors and shall include a President and a Secretary. The Board of Directors, in its discretion, also may choose a Chairman (who must be a director) and one or more Vice Presidents, Assistant Secretaries, Treasurer, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman, need such officers be directors of the Corporation.

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Section 2. Election. The Board of Directors, at its first meeting held after each Annual Meeting (or action by written consent of stockholders in lieu of the Annual Meeting if permitted by the Certificate of Incorporation and these By-Laws), shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer of the Corporation may be removed at any time by the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President or any other officer authorized to do so by the Board of Directors and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

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Section 4. Chairman of the Board of Directors. The Chairman, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman shall be the President of the Corporation, unless the Board of Directors designates another director to serve as the Chairman, and, except where by law the signature of the President is required, the Chairman shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. During the absence or disability of the President, the Chairman shall exercise all the powers and discharge all the duties of the President. The Chairman shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these By-Laws or by the Board of Directors.

Section 5. President. The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the President. In the absence or disability of the Chairman, or if there be none, the President shall preside at all meetings of the stockholders and, provided the President is also a director, the Board of Directors. If there be no Chairman, or if the Board of Directors shall otherwise designate, the President shall be the Chief Executive Officer. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these By-Laws or by the Board of Directors.

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Section 6. Vice Presidents. At the request of the President or in the President's absence or in the event of the President's inability or refusal to act (and if there be no Chairman), the Vice President, or the Vice Presidents if there are more than one (in the order designated by the Board of Directors), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Chairman and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 7. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman or the President, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it



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and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 8. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of the Treasurer and for the restoration to the Corporation, in case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under the Treasurer's control belonging to the Corporation.

Section 9. Assistant Secretaries. Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

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Section 10. Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of Assistant Treasurer and for the restoration to the Corporation, in case of the Assistant Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Assistant Treasurer's possession or under the Assistant Treasurer's control belonging to the Corporation.

Section 11. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

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**ARTICLE V**

**STOCK**

Section 1. Shares of Stock. Except as otherwise provided in a resolution approved by the Board of Directors, all shares of capital stock of the Corporation shall be uncertificated shares.

Section 2. Signatures. To the extent any shares are represented by certificates, any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate or uncertificated shares be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate or uncertificated shares.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these By-Laws. Transfers of stock shall be made on

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the books of the Corporation, and (a) in the case of certificated shares of stock, only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes, or, (b) in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; provided, however, that such surrender and endorsement (to the extent any shares are represented by certificates), compliance or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 5. Dividend Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

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Section 6. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7. Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

## **ARTICLE VI**

### **NOTICES**

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under applicable law, the Certificate of Incorporation or these By-Laws shall be effective if given by a form of electronic transmission if consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written

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notice to the Corporation. Any such consent shall be deemed to be revoked if (i) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or Assistant Secretary or to the transfer agent, or other person responsible for the giving of notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by electronic transmission, as described above, shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice; (iii) in the case of notices to stockholders, if by a posting on an electronic network, together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission consented to by such person in advance, when directed to such person. Notice to directors or committee members may be given personally or by telegram, telex, cable or by means of electronic transmission.

Section 2. Waivers of Notice. Whenever any notice is required by applicable law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, or a waiver by electronic transmission by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of,

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any Annual Meeting or Special Meeting or any regular or special meeting of the directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation or these By-Laws.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 8 of Article III hereof), and may be paid in cash, in property or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be January 1, to December 31 or as otherwise fixed by resolution of the Board of Directors.

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Section 4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## **ARTICLE VIII**

### **INDEMNIFICATION**

Section 1. Power to Indemnify in Actions, Suits or Proceedings Other than Those by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall indemnify, to the fullest extent permitted by applicable law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.



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Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall indemnify, to the fullest extent permitted by applicable law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation 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, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Authorization of Indemnification. Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of

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conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 4. Good Faith Defined. For purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with

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reasonable care by the Corporation or another enterprise. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be.

Section 5. Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 1 or Section 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VIII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 6. Expenses Payable in Advance. Expenses (including attorneys' fees) incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of

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such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 1 and Section 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or Section 2 of this Article VIII but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

Section 8. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VIII.

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Section 9. Certain Definitions. For purposes of this Article VIII, references to “the Corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation 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, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term “another enterprise” as used in this Article VIII shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article VIII, references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article VIII.

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Section 10. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11. Limitation on Indemnification. Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5 of this Article VIII), the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors.

Section 12. Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to directors and officers of the Corporation.

## **ARTICLE IX**

### **AMENDMENTS**

Section 1. Amendments. These By-Laws may be altered, amended or repealed, in whole or in part, or new By-Laws may be adopted by the stockholders or by the Board of Directors; provided, however, that notice of such alteration, amendment, repeal or

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adoption of new By-Laws be contained in the notice of such meeting of the stockholders or Board of Directors, as the case may be. Except where otherwise required by these By-Laws or the Certificate of Incorporation, the affirmative vote of at least a majority of the Board of Directors shall be required to adopt, amend, alter or repeal these By-Laws. These By-Laws also may be adopted, amended, altered or repealed by the affirmative vote of the holders of at least a majority of the issued and outstanding capital stock of the Corporation entitled to vote thereon; provided, however, that from and after the date that Trimaran Pollo Partners, L.L.C., a Delaware limited liability company cease collectively to beneficially own (directly or indirectly) at least forty percent (40%) of the votes entitled to be cast by the shares of the then outstanding capital stock of the Corporation entitled to vote generally in the election of directors, the affirmative vote of the holders of at least 75 percent (75%) of the issued and outstanding capital stock of the Corporation entitled to vote thereon shall be required to adopt, amend, alter or repeal these By-Laws.

Section 2. Entire Board of Directors. As used in this Article IX and in these By-Laws generally, the term “entire Board of Directors” means the total number of directors which the Corporation would have if there were no vacancies.

Adopted as of July 24, 2014

## CERTIFICATIONS

I, Stephen J. Sather, certify that:

1. I have reviewed this quarterly report on Form 10-Q of El Pollo Loco Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and [reserved] for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) [Reserved];
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.



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Date: September 4, 2014

/s/ Stephen J. Sather

Stephen J. Sather  
President and Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATIONS

I, Laurance Roberts, certify that:

1. I have reviewed this quarterly report on Form 10-Q of El Pollo Loco Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and [reserved] for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) [Reserved];
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

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Date: September 4, 2014

/s/ Laurance Roberts

Laurance Roberts  
Chief Financial Officer  
(Principal Financial Officer)

CERTIFICATION

Under 18 U.S.C. section 1350, adopted by section 906 of the Sarbanes–Oxley Act of 2002, in connection with attached periodic report, the undersigned each certify that (i) the periodic report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

Date: September 4, 2014

/s/ Stephen J. Sather

Stephen J. Sather  
President and Chief Executive Officer

/s/ Laurance Roberts

Laurance Roberts  
Chief Financial Officer