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

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (date of earliest event reported): February 7, 2020

Franchise Group, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35588
(Commission
File Number)

27-3561876
(IRS Employer
Identification No.)

**1716 Corporate Landing Parkway
Virginia Beach, Virginia 23454**
(Address of Principal Executive Offices) (Zip Code)

(757) 493-8855
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	FRG	NASDAQ Global Market

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On February 7, 2020, in connection with Franchise Group, Inc.'s (the "Company") repurchases of Vitamin Shoppe, Inc.'s outstanding 2.25% Convertible Senior Notes due 2020 (the "VSI Convertible Notes"), certain investors (each, an "Investor" and, collectively, the "Investors") provided the Company with an aggregate of approximately \$65,925,422.32 of equity financing in order for Valor Acquisition, LLC, a subsidiary of the Company, to fund the repurchase or redemption of the VSI Convertible Notes and to make interest payments on the VSI Convertible Notes that are not so repurchased or redeemed until their maturity and to also fund general, working capital and cash needs of the Company, in cash by wire transfer of immediately available funds, through purchases of shares of common stock of the Company at \$12.00 per share under the Equity Commitment Letter, dated August 7, 2019, between the Company and Tributum, L.P. (as amended, the "ECL"), and \$23.00 per share in connection with a separate private placement of shares of common stock (collectively, the "Equity Financing") pursuant to certain subscription agreements (each, a "Subscription Agreement") entered into by each Investor with the Company. Pursuant to the ECL, Tributum, L.P. assigned certain of its obligations thereunder to provide a portion of such Equity Financing to the Investors and certain other investors. The foregoing summary is subject to, and qualified in its entirety by, the full text of the forms of Subscription Agreement, which are incorporated herein by reference to Exhibit 10.1 to this Current Report on Form 8-K.

Item 3.02 Unregistered Sales of Equity Securities.

Reference is made to the disclosure set forth under Item 1.01 of this Current Report on Form 8-K concerning the issuance of shares of the Company's common stock in connection with the Equity Financing, which entitled the Investors to receive, in the aggregate, approximately 3,877,964.65 shares of the Company's common stock (the "Equity Securities").

The Company relied on an exemption from registration for the issuances and sales described above pursuant to Section 4(a)(2) and/or Rule 506 of Regulation D of the United States Securities Act of 1933, as amended (the "Securities Act"), because the foregoing issuances and sales did not involve a public offering, the Investors are "accredited investors" and/or had access to similar documentation and information as would be required in a registration statement under the Securities Act and the Investors acquired the Equity Securities for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof. The Equity Securities were offered without any general solicitation by the Company or its representatives. No underwriters or agents were involved in the foregoing issuances and sales and the Company paid no underwriting discounts or commissions. The Equity Securities issued and sold, are subject to transfer restrictions, and the certificates evidencing each Equity Security, if any, will contain an appropriate legend stating that such Equity Security has not been registered under the Securities Act and may not be offered or sold absent registration or pursuant to an exemption therefrom. The Equity Securities were not registered under the Securities Act and such Equity Securities may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws.

To the extent required, the information set forth in Item 1.01 to this Current Report on Form 8-K is incorporated herein by reference.

Item 8.01 Other Events.

On February 7, 2020, the Company completed the repurchase of approximately \$60.4 million in aggregate principal amount of the outstanding VSI Convertible Notes for an aggregate purchase price of approximately \$60.6 million, which includes accrued interest. Following such repurchase, approximately \$59,000 in aggregate principal amount of the VSI Convertible Notes remain outstanding. The VSI Convertible Notes have a maturity date of December 1, 2020. Upon the maturity of the VSI Convertible Notes that remain outstanding, the Company will use a portion of the remaining funds from the Equity Financing to redeem such outstanding VSI Convertible Notes pursuant to and in accordance with the terms of the Indenture, dated as of December 9, 2015, by and between Vitamin Shoppe, Inc. and Wilmington Trust, National Association.

Item 9.01. Financial Statements and Exhibits.**(d) Exhibits**

The following exhibit is filed with this Current Report on Form 8-K:

[10.1 Forms of Subscription Agreement](#)

EXHIBIT INDEX

Exhibit No. Description of Exhibits

[10.1](#) [Forms of Subscription Agreement](#)



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

FRANCHISE GROUP, INC.

By: /s/ Eric Seeton
Chief Financial Officer

Dated: February 12, 2020

SUBSCRIPTION AGREEMENT

This **SUBSCRIPTION AGREEMENT** (this "Agreement") is made as of February [●], 2020 by and between Franchise Group, Inc., a Delaware corporation (the "Company"), and the undersigned (the "Subscriber"), that is subscribing hereby to purchase shares of Common Stock, par value \$0.01 per share, of the Company ("Common Stock").

WHEREAS, on August 7, 2019 the Company entered into that certain Merger Agreement, by and among Vitamin Shoppe, Inc., a Delaware corporation ("Target"), Valor Acquisition, LLC, a Delaware limited liability company and indirect subsidiary of the Company ("Merger Sub"), and the Company (as such agreement may be amended, restated or otherwise modified from time to time, the "Merger Agreement"), pursuant to which, among other things, subject to the terms and conditions set forth in the Merger Agreement, Target agreed to merge with and into Merger Sub, with Merger Sub continuing as the surviving corporation in such merger and an indirect subsidiary of the Company (the "Transaction");

WHEREAS, contemporaneously with the Company's entry into the Merger Agreement, the Company entered into an equity commitment letter (as amended prior to the date hereof, the "ECL") with Tributum, L.P. ("Tributum"), pursuant to which Tributum has agreed to provide \$70,000,000 of equity financing for the Transaction on the terms set forth in the ECL (the "Equity Commitment");

WHEREAS, on December 16, 2019, the Company and Tributum agreed to amend the ECL to provide that any portion of the Equity Commitment that was not funded at the closing of the Transaction would remain available to fund repurchases of Target's 2.25% Convertible Senior Notes due 2020 (the "Target Convertible Notes");

WHEREAS, pursuant to the terms of the ECL, Tributum has the right to fund its Equity Commitment directly or indirectly through one or more Affiliates or other designated co-investors and assign its rights and obligations under the ECL to one or more Persons;

WHEREAS, pursuant to the ECL, Tributum has assigned a portion of its Equity Commitment to the Subscriber; and

WHEREAS, in connection with the repurchases of the Target Convertible Notes, subject to the terms and conditions set forth in this Agreement, the Company and the Subscriber desire to enter into this Agreement pursuant to which the Subscriber will purchase from the Company, and the Company will issue to the Subscriber, the Subscription Shares (as defined below).

NOW, THEREFORE, in consideration of the premises and of the mutual representations, warranties, covenants and obligations hereinafter set forth and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Purchase and Sale of Common Stock. Subject to the terms and conditions set forth in this Agreement, the Subscriber shall purchase, and the Company shall issue and sell to the Subscriber, [●] shares of Common Stock (the "Subscription Shares"), at a purchase price of \$12.00 per share, for an aggregate purchase price of \$[●] in cash (such amount, the "Purchase Price"). The issuance by the Company of the Subscription Shares and the purchase by the Subscriber of the Subscription Shares in exchange for the payment of the Purchase Price as described in the foregoing provisions of this Section 1 are hereby collectively referred to herein as the "Subscription".

2. Closing.

- (a) The closing of the purchase and sale of the Subscription Shares (the “Closing”) shall take place at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, on the date hereof, or at such different time or date and at such other place as the Subscriber and the Company may mutually agree in writing (the “Closing Date”).
- (b) At the Closing, the Company shall deliver to the Subscriber or to the Subscriber’s designated custodian a certificate or certificates representing the Subscription Shares, registered in the name of the Subscriber or its nominee, in exchange for receipt at the Closing by the Company from the Subscriber of the Purchase Price, which shall be paid by wire transfer of immediately available funds to an account designated in writing by the Company. Notwithstanding the foregoing, the Subscriber may elect to have the Subscription Shares evidenced in book entry format with the Company’s transfer agent in lieu of the Company delivering certificates representing the Subscription Shares to the Subscriber.

3. Representations and Warranties of the Subscriber. The Subscriber hereby represents and warrants to the Company, as of the date hereof (except to the extent another date is specified below), as follows:

- (a) *Authority and Approval; Enforceability.* The Subscriber has all requisite power, authority and legal capacity to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the Subscription. The execution, delivery and performance by the Subscriber of this Agreement, and the consummation by it of the Subscription, have been duly and validly authorized by all necessary action on the part of the Subscriber, and no other proceedings on the part of the Subscriber are necessary to authorize the execution and delivery by the Subscriber of this Agreement and the consummation by it of the Subscription. This Agreement has been duly executed and delivered by the Subscriber and, assuming due authorization, execution and delivery hereof by the Company, is a legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other Laws affecting creditors’ rights generally from time to time in effect and by general principles of equity).
- (b) *Non-contravention.* The execution, delivery and performance of this Agreement, and the consummation of the Subscription, do not and will not conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any lien (other than liens, if any, contained in the certificate of incorporation or bylaws of the Company and restrictions on transfer pursuant to applicable securities laws, in each case in respect of the Subscription Shares) in or upon any of the properties or other assets of the Subscriber under, (i) the organizational documents of the Subscriber (if Subscriber is an entity), (ii) any Contract to which the Subscriber is a party or any of its properties or other assets is subject or (iii) subject to (x) the filing of a Schedule 13D or an amendment to an existing Schedule 13D filing under the Exchange Act, and (y) such filings and approvals as may be required by any applicable state securities or “blue sky” Laws, any Law applicable to the Subscriber or its properties or other assets, other than, in the case of clauses (ii) and (iii), any such conflicts, violations, breaches, defaults, rights, losses or liens that have not had or would not reasonably be expected to have, individually or in the aggregate, a Subscriber Material Adverse Effect.

- (c) *Litigation.* There is no Legal Proceeding pending or, to the Knowledge of the Subscriber, threatened, and to the Knowledge of Subscriber, there is no external investigation pending or threatened with respect to the Subscriber, nor is there any material judgment, decree, injunction, rule or order of any Governmental Authority or arbitrator outstanding with respect to the Subscriber, except in each case for any Legal Proceedings that have not had and would not reasonably be expected to have, individually or in the aggregate, a Subscriber Material Adverse Effect.
- (d) *No Brokers.* No broker, investment banker, financial advisor or other person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses, in connection with the Subscription based upon arrangements made by or on behalf of the Subscriber.
- (e) *Accredited Investor; Purchase for Own Account; No Registration.*
- i. The Subscriber has such knowledge and experience in financial and business matters such that it is capable of evaluating the merits and risks of its investment.
 - ii. The Subscriber is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933 (as amended) (the "Securities Act").
 - iii. The Subscriber is experienced in evaluating and investing in private placement transactions of securities of companies in a similar stage of development and acknowledges that it is able to fend for itself, can bear the economic risk of its investment in the Company and has such knowledge and experience in financial and business matters that the Subscriber is capable of evaluating the merits and risks of the investment in the Subscription Shares and can afford a complete loss of its investment.
 - iv. The Subscriber is acquiring the Subscription Shares for investment only and for its own account, and not with a view toward or for sale in connection with any distribution thereof. The Subscriber has no present plan or intention of distributing, selling, exchanging, transferring or otherwise disposing of any such Subscription Shares.
 - v. The Subscriber has been advised and understands that (1) the Subscription Shares have not been registered under the Securities Act, or any state securities or "blue sky" Laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities and "blue sky" Laws or unless an exemption from such registration requirements is available, (2) the Subscriber may be required to hold, and continue to bear the economic risk of its investment in, the Subscription Shares indefinitely, unless the offer and sale of such Subscription Shares is subsequently registered under the Securities Act and all applicable state securities and "blue sky" Laws or an exemption from such registration is available, (3) Rule 144 promulgated under the Securities Act is not presently available with respect to the sale of any Subscription Shares, (4) when and if the Subscription Shares may be disposed of without registration under the Securities Act in reliance on Rule 144 of the Securities Act, the amount of Subscription Shares that may be disposed of may be limited in accordance with the terms and conditions of such Rule and (5) if an exemption under Rule 144 of the Securities Act is not available, the public offer or sale of the Subscription Shares without registration will require compliance with some other exemption under the Securities Act and compliance with any state securities or "blue sky" Laws.

(f) *Sufficiency of Funds.* The Subscriber has uncalled capital commitments or otherwise has available funds sufficient to pay the Purchase Price hereunder.

4. **Representations and Warranties of the Company.** Except as disclosed in the reports, schedules, forms, statements and other documents (including exhibits and other information incorporated therein) with the SEC since April 30, 2019 but prior to the date hereof and publicly available on the SEC's Electronic Data Gathering Analysis and Retrieval system (collectively, the "Company SEC Documents") (but (i) without giving effect to any amendment thereof filed with or furnished to the SEC on the date of this Agreement and (ii) excluding any disclosure (other than statements of historical fact) contained in such Company SEC Documents under the heading "Risk Factors" or "Cautionary Statement About Forward-Looking Statements" or similar heading and any other disclosures contained or referenced therein of factors or risks that are predictive, cautionary or forward-looking in nature), the Company represents and warrants to the Subscriber, as of the date hereof (except to the extent another date is specified below), as follows:

- (a) *Organization, Standing and Corporate Power.* The Company is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware and has all requisite corporate power and authority to carry on its business as now being conducted. Each Subsidiary of the Company is an entity duly organized, validly existing and in good standing (except to the extent the "good standing" concept is not applicable in any relevant jurisdiction) under the Laws of the jurisdiction in which it is formed and has all requisite corporate, limited liability company or other entity power and authority to carry on its business as now being conducted, except to the extent that any failure to be so organized, validly existing and in good standing has not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company and each of its Subsidiaries is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed has not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company has, prior to the date hereof, made available to the Subscriber true and complete copies of the certificate of incorporation and bylaws of the Company. There has been no breach by the Company of the certificate of incorporation or bylaws of the Company, each as in effect from time to time, except as would not have a Company Material Adverse Effect.
- (b) *Subsidiaries.* All the outstanding shares of capital stock of, or other equity interests in, each Subsidiary of the Company have been validly issued and, where applicable, are fully paid and nonassessable, and are owned directly or indirectly by the Company free and clear of any liens other than Permitted Liens. Except (i) as set forth on Schedule 5(b) hereto and (ii) for the capital stock or other equity or voting interests of its Subsidiaries, the Company does not own, directly or indirectly, any capital stock or other equity or voting interests in any person. Neither the execution and delivery of this Agreement, nor the repurchases of the Target Convertible Notes, by the Company will conflict with or result in a breach of, or trigger a right of first refusal or other preferential purchase right or preemptive right under any organizational documents, partnership agreement, joint venture agreement, stockholders agreement or similar agreement in connection with the Company's or its Subsidiaries' ownership of any capital stock or other equity or voting interests in any Person set forth on Schedule 5(b) hereto.
- (c) *Authority and Approval; Enforceability.* The Company has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the Subscription. The execution, delivery and performance by the Company of this Agreement and the consummation by it of the Subscription, have been duly and validly authorized by the board of directors of the Company and no other corporate action on the part of the Company pursuant to Delaware Law, the applicable listing standards of the NASDAQ Stock Market or otherwise, is necessary to authorize the execution and delivery by the Company of this Agreement and the consummation by it of the Subscription. This Agreement has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery hereof by the Subscriber, is a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other Laws affecting creditors' rights generally from time to time in effect and by general principles of equity).

- (d) *Non-contravention.* The execution, delivery and performance of this Agreement, and the consummation of the Subscription, do not and will not, conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any lien in or upon any of the properties or other assets of the Company or any of its Subsidiaries under, (i) the organizational documents of the Company, (ii) any Contract to which the Company or any of its Subsidiaries is a party or any of their respective properties or other assets is subject or (iii) any Law applicable to the Company or any of its Subsidiaries or their respective properties or other assets, other than, in the case of clauses (ii) and (iii), any such conflicts, violations, breaches, defaults, rights, losses or liens that have not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.
- (e) *Capital Structure.* The authorized capital stock of the Company consists of (i) 180,000,000 shares of Common Stock and (ii) 20,000,000 shares of Voting Non-Economic Preferred Stock, par value \$0.01 per share ("Preferred Stock"). As of January 24, 2020, (A) 20,604,225 shares of Common Stock were issued and outstanding, (B) 1,886,667 shares of Preferred Stock were issued and outstanding, (C) there were restricted stock units issued under the JTH Holding, Inc. 2011 Equity and Cash Incentive Plan (the "2011 Stock Plan") covering 63,682 shares of Common Stock, (D) there were options to acquire 460,285 shares of Common Stock outstanding under the 2011 Stock Plan, (E) there were restricted stock units and performance restricted stock units issued under the Franchise Group, Inc. 2019 Omnibus Incentive Plan (the "2019 Plan") covering 601,666 shares of Common Stock and (F) 4,398,334 shares of Common Stock were reserved for future issuances pursuant to the 2019 Plan.
- (f) *Valid Issuance.* The Common Stock issuable in the Subscription, when issued, sold and delivered at the Closing, will be duly authorized and validly issued, fully paid and nonassessable, and will be issued free and clear of any liens (other than such liens created by the certificate of incorporation of the Company or by applicable securities Laws) or any preemptive rights.
- (g) *Company SEC Documents; No Undisclosed Liabilities.*
- (i) The Company has timely filed or furnished the Company SEC Documents. No Subsidiary of the Company is required to file or furnish, or files or furnishes, any form, report or other document with the SEC.
 - (ii) As of their respective dates, the Company SEC Documents complied in all material respects with the requirements of the Securities Act or the Securities Exchange Act of 1934, as amended, as the case may be, applicable to such Company SEC Documents, and, as of their respective dates, none of the Company SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, unless such information contained in any Company SEC Document has been amended or superseded by a later-filed Company SEC Document that was filed prior to the date hereof.

- (iii) The financial statements of the Company included in the Company SEC Documents comply as of their respective dates as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of unaudited statements, for normal and recurring year-end adjustments not material in amount and as permitted by Form 10-Q of the SEC or other rules and regulations of the SEC) applied by the Company on a consistent basis during the periods and at the dates involved (except as may be indicated therein or in the notes thereto) and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (except, in the case of unaudited statements, for normal and recurring year-end adjustments not material in amount and as permitted by Form 10-Q of the SEC or other rules and regulations of the SEC). Neither the Company nor any of its Subsidiaries maintains any “off balance sheet arrangements” within the meaning of Item 303 of Regulation S-K of the SEC.
- (iv) Neither the Company nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) that would be required under GAAP to be reflected on a consolidated balance sheet of the Company and its Subsidiaries (including the notes thereto), except for any such liabilities or obligations (A) accrued, disclosed, reflected or reserved against in the most recent financial statements (including any related notes) contained in the Company SEC Documents filed prior to the date of this Agreement, (B) incurred in the ordinary course of business since the date of the latest balance sheet included in such financial statements, (C) incurred in connection with this Agreement, the Merger Agreement, the agreements and documents ancillary thereto, the Subscription, the Transaction and the other transactions ancillary to the Transaction, or (D) that have not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.
- (h) *Absence of Certain Changes or Events.* Since October 31, 2019, until the date of this Agreement, (i) the Company and its Subsidiaries have conducted their respective businesses in all material respects in accordance with the ordinary course of such businesses and (ii) (A) there has not been any change, effect, event, circumstance, occurrence or state of facts that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (B) neither the Company nor one of its Subsidiaries has sold, leased, transferred, assigned or otherwise disposed of any material assets, other than in the ordinary course of business consistent with past practice, (C) the Company has not (1) declared, set aside or paid any distribution in respect of the capital stock of the Company or other equity interests of the Company or (2) redeemed or purchased any capital stock of the Company or other equity interests of the Company, (D) neither the Company nor its Subsidiaries have made, changed or revoked any material Tax election, filed an amended Tax Return, settled any Tax audit or changed any Tax accounting periods or methods and (E) neither the Company nor its Subsidiaries have committed to do any of the foregoing.

- (i) *Litigation.* There is no material Legal Proceeding pending or, to the Knowledge of the Company, threatened, and the Company has no Knowledge of any material external investigation pending or threatened with respect to the Company or its Subsidiaries, nor is there any material judgment, decree, injunction, rule or order of any Governmental Authority or arbitrator outstanding with respect to the Company or any of its Subsidiaries.
- (j) *Compliance with Laws.*
 - (i) The Company and each of its Subsidiaries are and have been since October 31, 2019, in compliance with all Laws applicable to them, their properties or other assets or their business or operations, except for such violations or noncompliance that have not been and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company and its Subsidiaries have in effect all Permits necessary to carry on their businesses as currently conducted, and there has occurred no violation of, default (with or without notice or lapse of time or both) under, or event giving to others any right of termination, amendment or cancellation of, with or without notice or lapse of time or both, any Permit, except for such violation, defaults, terminations, amendments or cancellations that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect. There is no event which has occurred that would reasonably be expected to result in the termination, revocation, cancellation, non-renewal or adverse modification of any such Permit, except where such termination, revocation, cancellation, non-renewal or adverse modification would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.
 - (ii) Since October 31, 2019, (A) neither the Company nor any of its Subsidiaries has received any written notice from any Governmental Authority that alleges or relates to (1) any violation or noncompliance (or reflects that the Company or any of its Subsidiaries is under investigation or the subject of an inquiry by any such Governmental Authority for such alleged noncompliance) with any applicable Law or (2) any fine, assessment or cease and desist order, or the suspension, revocation or limitation or restriction of any Permit and (B) neither the Company nor any of its Subsidiaries has entered into any agreement or settlement with any Governmental Authority with respect to its alleged noncompliance with, or violation of, any applicable Law, except in each case in clauses (A) and (B) above to the extent any such violation, noncompliance, fine, assessment, order, suspension, revocation, limitation or restriction has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.
- (k) *No Brokers.* No broker, investment banker, financial advisor or other person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses, in connection with the Subscription based upon arrangements made by or on behalf of the Company or its Subsidiaries.

5. Remedies.

The parties hereto agree that irreparable damage would occur and that they would not have any adequate remedy at Law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement without proof of actual damages and without the requirement to post any bond or other security, this being in addition to any other remedy to which any such party is entitled at law or in equity.

6. Miscellaneous.

- (a) *Notices.* Except for notices that are specifically required by the terms of this Agreement to be delivered orally, all notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed given, delivered and/or provided (i) when delivered personally or when sent by e-mail of a .pdf attachment (provided no notice of non-delivery is generated), or (ii) on the next Business Day when dispatched for overnight delivery by Federal Express or a similar courier, in either case, to the parties hereto at the following addresses (or at such other address for a party hereto as shall be specified by like notice):

if to the Company, to:

Franchise Group, Inc.
1716 Corporate Landing Parkway
Virginia Beach, VA 23454
Email: tiffany.mcwaters@libtax.com
Attention: Tiffany McMillan-McWaters

with a copy to:

Troutman Sanders LLP
600 Peachtree Street NE
Suite 3000
Atlanta, GA 30308
Email: David.Ghegan@troutman.com
Attention: David W. Ghegan

if to the Subscriber, to:

[•]

with a copy to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Email: rleaf@willkie.com
Attention: Russell L. Leaf

- (b) *Further Assurances.* The parties agree to execute and deliver to each other such other documents and to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement.
- (c) *Exclusivity of Representations and Warranties; No Limitation of Other Representations or Warranties*

- (i) The representations and warranties made by the Subscriber in Section 3 of this Agreement and those contained in the Accredited Investor Questionnaire delivered by the Subscriber in connection with this Subscription (the “Questionnaire”) are the exclusive representations and warranties made by the Subscriber in connection with the Subscription. The Company hereby acknowledges that none of the Subscriber, any of its Subsidiaries, any of their respective equity holders or Representatives, or any other person, has made or is making any other express or implied representation or warranty with respect to the Subscriber, including any information provided or made available to the Company or its Subsidiaries or Representatives in anticipation or contemplation of the Subscription. Nothing in any representation or warranty in this Agreement or the Questionnaire shall in any way limit or restrict the scope, applicability or meaning of any other representation or warranty made by the Subscriber in this Agreement or the Questionnaire.
- (ii) The representations and warranties made by the Company in Section 4 of this Agreement are the exclusive representations and warranties made by the Company in connection with the Subscription. The Subscriber hereby acknowledges that none of the Company, any of its Subsidiaries, any of their respective equity holders or Representatives, or any other person, has made or is making any other express or implied representation or warranty with respect to the Company and its Subsidiaries or any of their respective businesses, operations, assets or liabilities, including any information provided or made available to the Subscriber or its Representatives in anticipation or contemplation of the Subscription. Nothing in any representation or warranty in this Agreement shall in any way limit or restrict the scope, applicability or meaning of any other representation or warranty made by the Company or its Subsidiaries in this Agreement.

(d) *Waivers and Amendments.*

- (i) At any time prior to the Closing, each party hereto may (A) extend the time for the performance of any of the obligations or other acts of the other party hereto or (B) subject to the proviso to the first sentence of Section 6(d)(iii) of this Agreement and to the extent permitted by Law, waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of any party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party hereto.
- (ii) The failure of any party to this Agreement to exercise any of its rights under this Agreement or otherwise shall not constitute a waiver by such party of such right.
- (iii) This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto; provided, that notwithstanding anything herein to the contrary, Section 6(h) (and any provision of this Agreement to the extent a modification, waiver or termination of such provision would modify the substance of any of the foregoing provisions) may not be modified, waived or terminated in a manner that impacts or is adverse in any respect to a Non-Recourse Party without the prior written consent of such Non-Recourse Party.

- (e) *Severability*. Except as expressly set forth in this Agreement, if any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the Subscription is fulfilled to the extent possible.
- (f) *Entire Agreement*. This Agreement (including the Schedules hereto) and the Merger Agreement constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter of this Agreement.
- (g) *No Third-Party Beneficiaries*. Except with respect to the Non-Recourse Parties, who are intended express third-party beneficiaries of the provisions of Section 6(h), this Agreement (including the Exhibits and Schedules hereto) is not intended to confer upon any person other than the parties hereto any rights, benefits or remedies.
- (h) *No Recourse*. Except for any party who is a signatory to this Agreement, and only to the extent of such party's obligations hereunder, no former, current or future direct or indirect equity holders, controlling persons, stockholders, directors, officers, employees, members, managers, agents, trustees, Affiliates, general or limited partners or assignees of the Company or the Subscriber or of any former, current or future direct or indirect equity holder, controlling person, stockholder, director, officer, employee, member, manager, trustee, general or limited partner, Affiliate, agent or assignee of the Company or the Subscriber (collectively, "Non-Recourse Parties") shall have any liability or obligation for any of the representations, warranties, covenants, agreements, obligations or liabilities of the Company or the Subscriber, as applicable, under this Agreement or of or for any Legal Proceeding based on, in respect of, or by reason of, the Subscription, (including the breach, termination or failure to consummate the Subscription), whether based on contract, tort or strict liability, by the enforcement of any assessment, by any legal or equitable proceeding, by virtue of any statute, regulation or applicable Law or otherwise and whether by or through attempted piercing of the corporate or partnership veil, by or through a claim by or on behalf of a party who is a signatory to this Agreement or any other person or otherwise. The parties hereto hereby agree that the Non-Recourse Parties shall be express third party beneficiaries of this Section 6(h).
- (i) *Successors and Assigns*. Subject to the provisions of Section 6(n), all the terms and provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto.
- (j) *Choice of Law*. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of Laws thereof.
- (k) *Exclusive Jurisdiction*. Each of the parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or in the event, but only in the event, that such court does not have subject matter jurisdiction over such action or proceeding, the Superior Court of the State of Delaware (Complex Commercial Division) or, if subject matter jurisdiction over the action or proceeding is vested exclusively in the federal courts of the United States of America, the United States District Court for the District of Delaware) (such courts, the "Chosen Courts"). In addition, each of the parties hereto irrevocably (a) submits itself to the exclusive jurisdiction of the Chosen Courts for the purpose of any Legal Proceeding directly or indirectly based upon, relating to or arising out of this Agreement or the Subscription, or any related agreement, certificate or other document delivered in connection therewith or the negotiation, execution, interpretation, enforcement or performance hereof or thereof, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from the Chosen Courts and (c) agrees that it will not bring any action relating to this Agreement or the Subscription in any court other than the Chosen Courts. Each of the parties hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any Legal Proceeding with respect to this Agreement or the Subscription, or any related agreement, certificate or other document delivered in connection therewith or the negotiation, execution, interpretation, enforcement or performance hereof or thereof, (x) any claim that it is not personally subject to the jurisdiction of the Chosen Courts for any reason other than the failure to serve in accordance with this Section 6(k), (y) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in the Chosen Courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (z) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter of this Agreement, may not be enforced in or by such courts. Each of the parties hereto hereby irrevocably consents to service being made through the notice procedures set forth in Section 6(a) and agrees that service of any process, summons, notice or document by email or mail to the respective addresses set forth in Section 6(a) shall be effective service of process for any Legal Proceeding in connection with this Agreement or the Subscription. Nothing in this Section 6(k) shall affect the right of any party hereto to serve legal process in any other manner permitted by Law.

(l) WAIVER OF JURY TRIAL. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN OR THE PERFORMANCE OF SERVICES THEREUNDER OR RELATED THERETO. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A CLAIM, (B) SUCH PARTY HAS CONSIDERED AND UNDERSTANDS THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6(l).

(m) *Survival of Provisions; Knowledge*.

- (i) The representations and warranties made by the parties hereto in Section 3 and Section 4 hereof shall survive the Closing until the first anniversary of the Closing, and any claim with respect thereto must be made prior to the expiration of such survival period; provided, that if any claim with respect thereto is made prior to the expiration of such survival period, then the applicable representation or warranty that is the subject of such claim shall survive until such time as such claim is finally resolved by the parties or finally determined by a court of competent jurisdiction and is non-appealable. The covenants and agreements made by the parties hereto shall survive the Closing in accordance with their terms.

- (ii) The Company shall not be liable to the Subscriber based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of the Company contained in this Agreement to the extent that any such inaccuracy or breach was within the Knowledge of the Subscriber on or prior to the date hereof.
- (n) *Assignment.* No party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other party to this Agreement; provided, that the Subscriber may assign any of its rights or obligation under this Agreement, in whole or in part, to an Affiliate of the Subscriber without the prior written consent of the Company, except that any such assignment shall not release the Subscriber of its obligations under this Agreement.
- (o) *Defined Terms; Interpretation.* Except as otherwise expressly provided herein, capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement. For purposes of this Agreement, (i) “Knowledge” means with respect to any party hereto the actual (but not constructive or imputed) knowledge of such party hereto or, if applicable, the executive officers of such party hereto (except with respect to Section 6(m)(ii) hereof, after due inquiry of such party hereto or, if applicable, the officers of such party hereto with oversight responsibilities for the matter in question), (ii) “Subscriber Material Adverse Effect” means any change, effect, event, circumstance, occurrence or state of facts that prevents or materially impairs or materially delays the ability of the Subscriber to consummate the Subscription and (iii) “Company Material Adverse Effect” means any change, effect, event, circumstance, occurrence or state of facts that (A) is materially adverse to the business, condition (financial or otherwise), assets or results of operations of the Company and its Subsidiaries (taken as a whole), or (B) prevents or materially impairs or materially delays the ability of the Company and its Subsidiaries, as applicable, to consummate the repurchases of the Convertible Notes and/or the Subscription, other than in the case of clause (A), any change, effect, event, circumstance, occurrence or state of facts to the extent relating to (1) changes in general economic conditions or the credit, financial or capital markets, including changes in interest or exchange rates; (2) changes in general conditions in any industry in which the Company or any of its Subsidiaries operates or participates; (3) any failure, in and of itself, by the Company or any of its Subsidiaries to meet any analyst projections or any internal or published projections, forecasts, estimates or predictions of revenue, earnings or other financial or operating metrics before, on or after the date of this Agreement (provided that the underlying factors contributing to such failure shall not be deemed excluded unless such underlying factors would otherwise be excepted from this definition); (4) changes in general regulatory or political conditions after the date of this Agreement; (5) changes in GAAP or applicable Law or the interpretation thereof after the date of this Agreement; (6) changes in the trading price or volume of the Common Stock (provided that the underlying factors contributing to such change shall not be excluded unless such underlying factors would otherwise be excepted from this definition); (7) any natural or man-made disaster; or (8) any pandemic, act of terrorism, sabotage, military action or war, or any escalation or worsening thereof; provided, that with respect to clauses (1), (2), (4), (5), and (8), such change, effect, event, circumstance, occurrence or state of facts does not materially and disproportionately affect the Company and its Subsidiaries (taken as a whole) relative to other persons operating in the industries in which the Company or any of its Subsidiaries operate. The provisions of Section 1.3 of the Merger Agreement are incorporated herein by reference, *mutatis mutandis*.

(p) *Counterparts.* This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. Facsimile signatures or signatures received as a .pdf attachment to electronic mail shall be treated as original signatures for all purposes of this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE COMPANY:

FRANCHISE GROUP, INC.

By: _____
Name: Eric Seeton
Title: Chief Financial Officer

[Signature Page to Closing Subscription Agreement]

THE SUBSCRIBER:

[•]

By: [•]

By: _____
Name: [•]
Title: [•]

[Signature Page to Closing Subscription Agreement]

SCHEDULE 5(b)
Minority Equity Interests

The Company owns approximately 18.3% of Trilogy Software Inc.

SUBSCRIPTION AGREEMENT

This **SUBSCRIPTION AGREEMENT** (this “Agreement”) is made as of February [●], 2020, by and between Franchise Group, Inc., a Delaware corporation (the “Company”), and the undersigned (the “Subscriber”), that is subscribing hereby to purchase shares of Common Stock, par value \$0.01 per share, of the Company (“Common Stock”).

WHEREAS, on August 7, 2019 the Company entered into that certain Merger Agreement, by and among Vitamin Shoppe, Inc., a Delaware corporation (“Target”), Valor Acquisition, LLC, a Delaware limited liability company and indirect subsidiary of the Company (“Merger Sub”), and the Company (as such agreement may be amended, restated or otherwise modified from time to time, the “Merger Agreement”), pursuant to which, among other things, subject to the terms and conditions set forth in the Merger Agreement, Target agreed to merge with and into Merger Sub, with Merger Sub continuing as the surviving corporation in such merger and an indirect subsidiary of the Company (the “Transaction”);

WHEREAS, the Transaction closed on December 16, 2019 and in connection with the consummation of the Transaction, the Company wishes to undertake repurchases of Target’s 2.25% Convertible Senior Notes due 2020 (the “Target Convertible Notes”); and

WHEREAS, in connection with the repurchases of the Target Convertible Notes, subject to the terms and conditions set forth in this Agreement, the Company and the Subscriber desire to enter into this Agreement pursuant to which the Subscriber will purchase from the Company, and the Company will issue to the Subscriber, the Subscription Shares (as defined below).

NOW, THEREFORE, in consideration of the premises and of the mutual representations, warranties, covenants and obligations hereinafter set forth and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Purchase and Sale of Common Stock. Subject to the terms and conditions set forth in this Agreement, the Subscriber shall purchase, and the Company shall issue and sell to the Subscriber, [●] shares of Common Stock (the “Subscription Shares”), at a purchase price of \$[●] per share, for an aggregate purchase price of \$[●] in cash (such amount, the “Purchase Price”). The issuance by the Company of the Subscription Shares and the purchase by the Subscriber of the Subscription Shares in exchange for the payment of the Purchase Price as described in the foregoing provisions of this Section 1 are hereby collectively referred to herein as the “Subscription”.

2. Closing.

- (c) The closing of the purchase and sale of the Subscription Shares (the “Closing”) shall take place at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, on the date hereof, or at such different time or date and at such other place as the Subscriber and the Company may mutually agree in writing (the “Closing Date”).
 - (d) At the Closing, the Company shall deliver to the Subscriber or to the Subscriber’s designated custodian a certificate or certificates representing the Subscription Shares, registered in the name of the Subscriber or its nominee, in exchange for receipt at the Closing by the Company from the Subscriber of the Purchase Price, which shall be paid by wire transfer of immediately available funds to an account designated in writing by the Company. Notwithstanding the foregoing, the Subscriber may elect to have the Subscription Shares evidenced in book entry format with the Company’s transfer agent in lieu of the Company delivering certificates representing the Subscription Shares to the Subscriber.
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3. Representations and Warranties of the Subscriber. The Subscriber hereby represents and warrants to the Company, as of the date hereof (except to the extent another date is specified below), as follows:

- (g) *Authority and Approval; Enforceability*. The Subscriber has all requisite power, authority and legal capacity to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the Subscription. The execution, delivery and performance by the Subscriber of this Agreement, and the consummation by it of the Subscription, have been duly and validly authorized by all necessary action on the part of the Subscriber, and no other proceedings on the part of the Subscriber are necessary to authorize the execution and delivery by the Subscriber of this Agreement and the consummation by it of the Subscription. This Agreement has been duly executed and delivered by the Subscriber and, assuming due authorization, execution and delivery hereof by the Company, is a legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other Laws affecting creditors' rights generally from time to time in effect and by general principles of equity).
- (h) *Non-contravention*. The execution, delivery and performance of this Agreement, and the consummation of the Subscription, do not and will not conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any lien (other than liens, if any, contained in the certificate of incorporation or bylaws of the Company and restrictions on transfer pursuant to applicable securities laws, in each case in respect of the Subscription Shares) in or upon any of the properties or other assets of the Subscriber under, (i) the organizational documents of the Subscriber (if Subscriber is an entity), (ii) any Contract to which the Subscriber is a party or any of its properties or other assets is subject or (iii) subject to (x) the filing of a Schedule 13D or an amendment to an existing Schedule 13D filing under the Exchange Act, and (y) such filings and approvals as may be required by any applicable state securities or "blue sky" Laws, any Law applicable to the Subscriber or its properties or other assets, other than, in the case of clauses (ii) and (iii), any such conflicts, violations, breaches, defaults, rights, losses or liens that have not had or would not reasonably be expected to have, individually or in the aggregate, a Subscriber Material Adverse Effect.
- (i) *Litigation*. There is no Legal Proceeding pending or, to the Knowledge of the Subscriber, threatened, and to the Knowledge of Subscriber, there is no external investigation pending or threatened with respect to the Subscriber, nor is there any material judgment, decree, injunction, rule or order of any Governmental Authority or arbitrator outstanding with respect to the Subscriber, except in each case for any Legal Proceedings that have not had and would not reasonably be expected to have, individually or in the aggregate, a Subscriber Material Adverse Effect.
- (j) *No Brokers*. No broker, investment banker, financial advisor or other person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses, in connection with the Subscription based upon arrangements made by or on behalf of the Subscriber.

(k) *Accredited Investor; Purchase for Own Account; No Registration.*

- i. The Subscriber has such knowledge and experience in financial and business matters such that it is capable of evaluating the merits and risks of its investment.
- ii. The Subscriber is an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933 (as amended) (the “Securities Act”).
- iii. The Subscriber is experienced in evaluating and investing in private placement transactions of securities of companies in a similar stage of development and acknowledges that it is able to fend for itself, can bear the economic risk of its investment in the Company and has such knowledge and experience in financial and business matters that the Subscriber is capable of evaluating the merits and risks of the investment in the Subscription Shares and can afford a complete loss of its investment.
- iv. The Subscriber is acquiring the Subscription Shares for investment only and for its own account, and not with a view toward or for sale in connection with any distribution thereof. The Subscriber has no present plan or intention of distributing, selling, exchanging, transferring or otherwise disposing of any such Subscription Shares.
- v. The Subscriber has been advised and understands that (1) the Subscription Shares have not been registered under the Securities Act, or any state securities or “blue sky” Laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities and “blue sky” Laws or unless an exemption from such registration requirements is available, (2) the Subscriber may be required to hold, and continue to bear the economic risk of its investment in, the Subscription Shares indefinitely, unless the offer and sale of such Subscription Shares is subsequently registered under the Securities Act and all applicable state securities and “blue sky” Laws or an exemption from such registration is available, (3) Rule 144 promulgated under the Securities Act is not presently available with respect to the sale of any Subscription Shares, (4) when and if the Subscription Shares may be disposed of without registration under the Securities Act in reliance on Rule 144 of the Securities Act, the amount of Subscription Shares that may be disposed of may be limited in accordance with the terms and conditions of such Rule and (5) if an exemption under Rule 144 of the Securities Act is not available, the public offer or sale of the Subscription Shares without registration will require compliance with some other exemption under the Securities Act and compliance with any state securities or “blue sky” Laws.

(l) *Sufficiency of Funds.* The Subscriber has uncalled capital commitments or otherwise has available funds sufficient to pay the Purchase Price hereunder.

4. Representations and Warranties of the Company. Except as disclosed in the reports, schedules, forms, statements and other documents (including exhibits and other information incorporated therein) with the SEC since April 30, 2019 but prior to the date hereof and publicly available on the SEC’s Electronic Data Gathering Analysis and Retrieval system (collectively, the “Company SEC Documents”) (but (i) without giving effect to any amendment thereof filed with or furnished to the SEC on the date of this Agreement and (ii) excluding any disclosure (other than statements of historical fact) contained in such Company SEC Documents under the heading “Risk Factors” or “Cautionary Statement About Forward-Looking Statements” or similar heading and any other disclosures contained or referenced therein of factors or risks that are predictive, cautionary or forward-looking in nature), the Company represents and warrants to the Subscriber, as of the date hereof (except to the extent another date is specified below), as follows:

- (l) *Organization, Standing and Corporate Power.* The Company is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware and has all requisite corporate power and authority to carry on its business as now being conducted. Each Subsidiary of the Company is an entity duly organized, validly existing and in good standing (except to the extent the “good standing” concept is not applicable in any relevant jurisdiction) under the Laws of the jurisdiction in which it is formed and has all requisite corporate, limited liability company or other entity power and authority to carry on its business as now being conducted, except to the extent that any failure to be so organized, validly existing and in good standing has not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company and each of its Subsidiaries is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed has not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company has, prior to the date hereof, made available to the Subscriber true and complete copies of the certificate of incorporation and bylaws of the Company. There has been no breach by the Company of the certificate of incorporation or bylaws of the Company, each as in effect from time to time, except as would not have a Company Material Adverse Effect.
- (m) *Subsidiaries.* All the outstanding shares of capital stock of, or other equity interests in, each Subsidiary of the Company have been validly issued and, where applicable, are fully paid and nonassessable, and are owned directly or indirectly by the Company free and clear of any liens other than Permitted Liens. Except (i) as set forth on Schedule 5(b) hereto and (ii) for the capital stock or other equity or voting interests of its Subsidiaries, the Company does not own, directly or indirectly, any capital stock or other equity or voting interests in any person. Neither the execution and delivery of this Agreement, nor the repurchases of the Target Convertible Notes, by the Company will conflict with or result in a breach of, or trigger a right of first refusal or other preferential purchase right or preemptive right under any organizational documents, partnership agreement, joint venture agreement, stockholders agreement or similar agreement in connection with the Company’s or its Subsidiaries’ ownership of any capital stock or other equity or voting interests in any Person set forth on Schedule 5(b) hereto.
- (n) *Authority and Approval; Enforceability.* The Company has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the Subscription. The execution, delivery and performance by the Company of this Agreement and the consummation by it of the Subscription, have been duly and validly authorized by the board of directors of the Company and no other corporate action on the part of the Company pursuant to Delaware Law, the applicable listing standards of the NASDAQ Stock Market or otherwise, is necessary to authorize the execution and delivery by the Company of this Agreement and the consummation by it of the Subscription. This Agreement has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery hereof by the Subscriber, is a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other Laws affecting creditors’ rights generally from time to time in effect and by general principles of equity).
- (o) *Non-contravention.* The execution, delivery and performance of this Agreement, and the consummation of the Subscription, do not and will not, conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any lien in or upon any of the properties or other assets of the Company or any of its Subsidiaries under, (i) the organizational documents of the Company, (ii) any Contract to which the Company or any of its Subsidiaries is a party or any of their respective properties or other assets is subject or (iii) any Law applicable to the Company or any of its Subsidiaries or their respective properties or other assets, other than, in the case of clauses (ii) and (iii), any such conflicts, violations, breaches, defaults, rights, losses or liens that have not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

- (p) *Capital Structure.* The authorized capital stock of the Company consists of (i) 180,000,000 shares of Common Stock and (ii) 20,000,000 shares of Voting Non-Economic Preferred Stock, par value \$0.01 per share (“Preferred Stock”). As of January 24, 2020, (A) 20,604,225 shares of Common Stock were issued and outstanding, (B) 1,886,667 shares of Preferred Stock were issued and outstanding, (C) there were restricted stock units issued under the JTH Holding, Inc. 2011 Equity and Cash Incentive Plan (the “2011 Stock Plan”) covering 63,682 shares of Common Stock, (D) there were options to acquire 460,285 shares of Common Stock outstanding under the 2011 Stock Plan, (E) there were restricted stock units and performance restricted stock units issued under the Franchise Group, Inc. 2019 Omnibus Incentive Plan (the “2019 Plan”) covering 601,666 shares of Common Stock and (F) 4,398,334 shares of Common Stock were reserved for future issuances pursuant to the 2019 Plan.
- (q) *Valid Issuance.* The Common Stock issuable in the Subscription, when issued, sold and delivered at the Closing, will be duly authorized and validly issued, fully paid and nonassessable, and will be issued free and clear of any liens (other than such liens created by the certificate of incorporation of the Company or by applicable securities Laws) or any preemptive rights.
- (r) *Company SEC Documents; No Undisclosed Liabilities.*
- (i) The Company has timely filed or furnished the Company SEC Documents. No Subsidiary of the Company is required to file or furnish, or files or furnishes, any form, report or other document with the SEC.
 - (ii) As of their respective dates, the Company SEC Documents complied in all material respects with the requirements of the Securities Act or the Securities Exchange Act of 1934, as amended, as the case may be, applicable to such Company SEC Documents, and, as of their respective dates, none of the Company SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, unless such information contained in any Company SEC Document has been amended or superseded by a later-filed Company SEC Document that was filed prior to the date hereof.
 - (iii) The financial statements of the Company included in the Company SEC Documents comply as of their respective dates as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of unaudited statements, for normal and recurring year-end adjustments not material in amount and as permitted by Form 10-Q of the SEC or other rules and regulations of the SEC) applied by the Company on a consistent basis during the periods and at the dates involved (except as may be indicated therein or in the notes thereto) and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (except, in the case of unaudited statements, for normal and recurring year-end adjustments not material in amount and as permitted by Form 10-Q of the SEC or other rules and regulations of the SEC). Neither the Company nor any of its Subsidiaries maintains any “off balance sheet arrangements” within the meaning of Item 303 of Regulation S-K of the SEC.

- (iv) Neither the Company nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) that would be required under GAAP to be reflected on a consolidated balance sheet of the Company and its Subsidiaries (including the notes thereto), except for any such liabilities or obligations (A) accrued, disclosed, reflected or reserved against in the most recent financial statements (including any related notes) contained in the Company SEC Documents filed prior to the date of this Agreement, (B) incurred in the ordinary course of business since the date of the latest balance sheet included in such financial statements, (C) incurred in connection with this Agreement, the Merger Agreement, the agreements and documents ancillary thereto, the Subscription, the Transaction and the other transactions ancillary to the Transaction, or (D) that have not had or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.
- (s) *Absence of Certain Changes or Events.* Since October 31, 2019, until the date of this Agreement, (i) the Company and its Subsidiaries have conducted their respective businesses in all material respects in accordance with the ordinary course of such businesses and (ii) (A) there has not been any change, effect, event, circumstance, occurrence or state of facts that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (B) neither the Company nor one of its Subsidiaries has sold, leased, transferred, assigned or otherwise disposed of any material assets, other than in the ordinary course of business consistent with past practice, (C) the Company has not (1) declared, set aside or paid any distribution in respect of the capital stock of the Company or other equity interests of the Company or (2) redeemed or purchased any capital stock of the Company or other equity interests of the Company, (D) neither the Company nor its Subsidiaries have made, changed or revoked any material Tax election, filed an amended Tax Return, settled any Tax audit or changed any Tax accounting periods or methods and (E) neither the Company nor its Subsidiaries have committed to do any of the foregoing.
- (t) *Litigation.* There is no material Legal Proceeding pending or, to the Knowledge of the Company, threatened, and the Company has no Knowledge of any material external investigation pending or threatened with respect to the Company or its Subsidiaries, nor is there any material judgment, decree, injunction, rule or order of any Governmental Authority or arbitrator outstanding with respect to the Company or any of its Subsidiaries.
- (u) *Compliance with Laws.*
 - (i) The Company and each of its Subsidiaries are and have been since October 31, 2019, in compliance with all Laws applicable to them, their properties or other assets or their business or operations, except for such violations or noncompliance that have not been and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company and its Subsidiaries have in effect all Permits necessary to carry on their businesses as currently conducted, and there has occurred no violation of, default (with or without notice or lapse of time or both) under, or event giving to others any right of termination, amendment or cancellation of, with or without notice or lapse of time or both, any Permit, except for such violation, defaults, terminations, amendments or cancellations that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect. There is no event which has occurred that would reasonably be expected to result in the termination, revocation, cancellation, non-renewal or adverse modification of any such Permit, except where such termination, revocation, cancellation, non-renewal or adverse modification would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(ii) Since October 31, 2019, (A) neither the Company nor any of its Subsidiaries has received any written notice from any Governmental Authority that alleges or relates to (1) any violation or noncompliance (or reflects that the Company or any of its Subsidiaries is under investigation or the subject of an inquiry by any such Governmental Authority for such alleged noncompliance) with any applicable Law or (2) any fine, assessment or cease and desist order, or the suspension, revocation or limitation or restriction of any Permit and (B) neither the Company nor any of its Subsidiaries has entered into any agreement or settlement with any Governmental Authority with respect to its alleged noncompliance with, or violation of, any applicable Law, except in each case in clauses (A) and (B) above to the extent any such violation, noncompliance, fine, assessment, order, suspension, revocation, limitation or restriction has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(v) *No Brokers.* No broker, investment banker, financial advisor or other person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses, in connection with the Subscription based upon arrangements made by or on behalf of the Company or its Subsidiaries.

5. Remedies.

The parties hereto agree that irreparable damage would occur and that they would not have any adequate remedy at Law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement without proof of actual damages and without the requirement to post any bond or other security, this being in addition to any other remedy to which any such party is entitled at law or in equity.

6. Miscellaneous.

(q) *Notices.* Except for notices that are specifically required by the terms of this Agreement to be delivered orally, all notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed given, delivered and/or provided (i) when delivered personally or when sent by e-mail of a .pdf attachment (provided no notice of non-delivery is generated), or (ii) on the next Business Day when dispatched for overnight delivery by Federal Express or a similar courier, in either case, to the parties hereto at the following addresses (or at such other address for a party hereto as shall be specified by like notice):

if to the Company, to:

Franchise Group, Inc.
1716 Corporate Landing Parkway
Virginia Beach, VA 23454
Email: tiffany.mcwaters@libtax.com
Attention: Tiffany McMillan-McWaters

with a copy to:

Troutman Sanders LLP
600 Peachtree Street NE
Suite 3000
Atlanta, GA 30308
Email: David.Ghegan@troutman.com
Attention: David W. Ghegan

if to the Subscriber, to:

[•]

with a copy to:

Vintage Capital Management
4705 S. Apopka Vineland Road
Suite 210
Orlando, FL 32819
Email: bkahn@vintcap.com
Attention: Brian R. Kahn

and

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Email: rleaf@willkie.com
Attention: Russell L. Leaf

- (r) *Further Assurances.* The parties agree to execute and deliver to each other such other documents and to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement.
- (s) *Exclusivity of Representations and Warranties; No Limitation of Other Representations or Warranties.*
- (iii) The representations and warranties made by the Subscriber in Section 3 of this Agreement and those contained in the Accredited Investor Questionnaire delivered by the Subscriber in connection with this Subscription (the “Questionnaire”) are the exclusive representations and warranties made by the Subscriber in connection with the Subscription. The Company hereby acknowledges that none of the Subscriber, any of its Subsidiaries, any of their respective equity holders or Representatives, or any other person, has made or is making any other express or implied representation or warranty with respect to the Subscriber, including any information provided or made available to the Company or its Subsidiaries or Representatives in anticipation or contemplation of the Subscription. Nothing in any representation or warranty in this Agreement or the Questionnaire shall in any way limit or restrict the scope, applicability or meaning of any other representation or warranty made by the Subscriber in this Agreement or the Questionnaire.

(iv) The representations and warranties made by the Company in Section 4 of this Agreement are the exclusive representations and warranties made by the Company in connection with the Subscription. The Subscriber hereby acknowledges that none of the Company, any of its Subsidiaries, any of their respective equity holders or Representatives, or any other person, has made or is making any other express or implied representation or warranty with respect to the Company and its Subsidiaries or any of their respective businesses, operations, assets or liabilities, including any information provided or made available to the Subscriber or its Representatives in anticipation or contemplation of the Subscription. Nothing in any representation or warranty in this Agreement shall in any way limit or restrict the scope, applicability or meaning of any other representation or warranty made by the Company or its Subsidiaries in this Agreement.

(t) *Waivers and Amendments.*

(iv) At any time prior to the Closing, each party hereto may (A) extend the time for the performance of any of the obligations or other acts of the other party hereto or (B) subject to the proviso to the first sentence of Section 6(d)(iii) of this Agreement and to the extent permitted by Law, waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of any party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party hereto.

(v) The failure of any party to this Agreement to exercise any of its rights under this Agreement or otherwise shall not constitute a waiver by such party of such right.

(vi) This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto; provided, that notwithstanding anything herein to the contrary, Section 6(h) (and any provision of this Agreement to the extent a modification, waiver or termination of such provision would modify the substance of any of the foregoing provisions) may not be modified, waived or terminated in a manner that impacts or is adverse in any respect to a Non-Recourse Party without the prior written consent of such Non-Recourse Party.

(u) *Severability.* Except as expressly set forth in this Agreement, if any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the Subscription is fulfilled to the extent possible.

- (v) *Entire Agreement.* This Agreement (including the Schedules hereto) and the Merger Agreement constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter of this Agreement.
- (w) *No Third-Party Beneficiaries.* Except with respect to the Non-Recourse Parties, who are intended express third-party beneficiaries of the provisions of Section 6(h), this Agreement (including the Exhibits and Schedules hereto) is not intended to confer upon any person other than the parties hereto any rights, benefits or remedies.
- (x) *No Recourse.* Except for any party who is a signatory to this Agreement, and only to the extent of such party's obligations hereunder, no former, current or future direct or indirect equity holders, controlling persons, stockholders, directors, officers, employees, members, managers, agents, trustees, Affiliates, general or limited partners or assignees of the Company or the Subscriber or of any former, current or future direct or indirect equity holder, controlling person, stockholder, director, officer, employee, member, manager, trustee, general or limited partner, Affiliate, agent or assignee of the Company or the Subscriber (collectively, "Non-Recourse Parties") shall have any liability or obligation for any of the representations, warranties, covenants, agreements, obligations or liabilities of the Company or the Subscriber, as applicable, under this Agreement or of or for any Legal Proceeding based on, in respect of, or by reason of, the Subscription, (including the breach, termination or failure to consummate the Subscription), whether based on contract, tort or strict liability, by the enforcement of any assessment, by any legal or equitable proceeding, by virtue of any statute, regulation or applicable Law or otherwise and whether by or through attempted piercing of the corporate or partnership veil, by or through a claim by or on behalf of a party who is a signatory to this Agreement or any other person or otherwise. The parties hereto hereby agree that the Non-Recourse Parties shall be express third party beneficiaries of this Section 6(h).
- (y) *Successors and Assigns.* Subject to the provisions of Section 6(n), all the terms and provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto.
- (z) *Choice of Law.* This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of Laws thereof.
- (aa) *Exclusive Jurisdiction.* Each of the parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware (or in the event, but only in the event, that such court does not have subject matter jurisdiction over such action or proceeding, the Superior Court of the State of Delaware (Complex Commercial Division) or, if subject matter jurisdiction over the action or proceeding is vested exclusively in the federal courts of the United States of America, the United States District Court for the District of Delaware) (such courts, the "Chosen Courts"). In addition, each of the parties hereto irrevocably (a) submits itself to the exclusive jurisdiction of the Chosen Courts for the purpose of any Legal Proceeding directly or indirectly based upon, relating to or arising out of this Agreement or the Subscription, or any related agreement, certificate or other document delivered in connection therewith or the negotiation, execution, interpretation, enforcement or performance hereof or thereof, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from the Chosen Courts and (c) agrees that it will not bring any action relating to this Agreement or the Subscription in any court other than the Chosen Courts. Each of the parties hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any Legal Proceeding with respect to this Agreement or the Subscription, or any related agreement, certificate or other document delivered in connection therewith or the negotiation, execution, interpretation, enforcement or performance hereof or thereof, (x) any claim that it is not personally subject to the jurisdiction of the Chosen Courts for any reason other than the failure to serve in accordance with this Section 6(k), (y) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in the Chosen Courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (z) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter of this Agreement, may not be enforced in or by such courts. Each of the parties hereto hereby irrevocably consents to service being made through the notice procedures set forth in Section 6(a) and agrees that service of any process, summons, notice or document by email or mail to the respective addresses set forth in Section 6(a) shall be effective service of process for any Legal Proceeding in connection with this Agreement or the Subscription. Nothing in this Section 6(k) shall affect the right of any party hereto to serve legal process in any other manner permitted by Law.

(bb) WAIVER OF JURY TRIAL. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN OR THE PERFORMANCE OF SERVICES THEREUNDER OR RELATED THERETO. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A CLAIM, (B) SUCH PARTY HAS CONSIDERED AND UNDERSTANDS THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6(l).

(cc) *Survival of Provisions; Knowledge*.

- (i) The representations and warranties made by the parties hereto in Section 3 and Section 4 hereof shall survive the Closing until the first anniversary of the Closing, and any claim with respect thereto must be made prior to the expiration of such survival period; provided, that if any claim with respect thereto is made prior to the expiration of such survival period, then the applicable representation or warranty that is the subject of such claim shall survive until such time as such claim is finally resolved by the parties or finally determined by a court of competent jurisdiction and is non-appealable. The covenants and agreements made by the parties hereto shall survive the Closing in accordance with their terms.
- (ii) The Company shall not be liable to the Subscriber based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of the Company contained in this Agreement to the extent that any such inaccuracy or breach was within the Knowledge of the Subscriber on or prior to the date hereof.

- (dd) *Assignment*. No party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other party to this Agreement; provided, that the Subscriber may assign any of its rights or obligation under this Agreement, in whole or in part, to an Affiliate of the Subscriber without the prior written consent of the Company, except that any such assignment shall not release the Subscriber of its obligations under this Agreement.
- (ee) *Defined Terms; Interpretation*. Except as otherwise expressly provided herein, capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement. For purposes of this Agreement, (i) “Knowledge” means with respect to any party hereto the actual (but not constructive or imputed) knowledge of such party hereto or, if applicable, the executive officers of such party hereto (except with respect to Section 6(m)(ii) hereof, after due inquiry of such party hereto or, if applicable, the officers of such party hereto with oversight responsibilities for the matter in question), (ii) “Subscriber Material Adverse Effect” means any change, effect, event, circumstance, occurrence or state of facts that prevents or materially impairs or materially delays the ability of the Subscriber to consummate the Subscription and (iii) “Company Material Adverse Effect” means any change, effect, event, circumstance, occurrence or state of facts that (A) is materially adverse to the business, condition (financial or otherwise), assets or results of operations of the Company and its Subsidiaries (taken as a whole), or (B) prevents or materially impairs or materially delays the ability of the Company and its Subsidiaries, as applicable, to consummate the repurchases of the Convertible Notes and/or the Subscription, other than in the case of clause (A), any change, effect, event, circumstance, occurrence or state of facts to the extent relating to (1) changes in general economic conditions or the credit, financial or capital markets, including changes in interest or exchange rates; (2) changes in general conditions in any industry in which the Company or any of its Subsidiaries operates or participates; (3) any failure, in and of itself, by the Company or any of its Subsidiaries to meet any analyst projections or any internal or published projections, forecasts, estimates or predictions of revenue, earnings or other financial or operating metrics before, on or after the date of this Agreement (provided that the underlying factors contributing to such failure shall not be deemed excluded unless such underlying factors would otherwise be excepted from this definition); (4) changes in general regulatory or political conditions after the date of this Agreement; (5) changes in GAAP or applicable Law or the interpretation thereof after the date of this Agreement; (6) changes in the trading price or volume of the Common Stock (provided that the underlying factors contributing to such change shall not be excluded unless such underlying factors would otherwise be excepted from this definition); (7) any natural or man-made disaster; or (8) any pandemic, act of terrorism, sabotage, military action or war, or any escalation or worsening thereof; provided, that with respect to clauses (1), (2), (4), (5), and (8), such change, effect, event, circumstance, occurrence or state of facts does not materially and disproportionately affect the Company and its Subsidiaries (taken as a whole) relative to other persons operating in the industries in which the Company or any of its Subsidiaries operate. The provisions of Section 1.3 of the Merger Agreement are incorporated herein by reference, *mutatis mutandis*.
- (ff) *Counterparts*. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. Facsimile signatures or signatures received as a .pdf attachment to electronic mail shall be treated as original signatures for all purposes of this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE COMPANY:

FRANCHISE GROUP, INC.

By: _____
Name: Eric Seeton
Title: Chief Financial Officer

[Signature Page to Closing Subscription Agreement]

THE SUBSCRIBER:

[•]

By: _____
Name:
Title:

[Signature Page to Closing Subscription Agreement]

SCHEDULE 5(b)
Minority Equity Interests

The Company owns approximately 18.3% of Trilogy Software Inc.