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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

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

**Date of Report (Date of earliest event reported) May 29, 2012**

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**Carrols Restaurant Group, Inc.**

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction  
of incorporation)

001-33174  
(Commission  
File Number)

16-1287774  
(I.R.S. Employer  
Identification No.)

968 James Street, Syracuse, New York  
(Address of principal executive offices)

13203  
(Zip Code)

**Registrant's telephone number, including area code (315) 424-0513**

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

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

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13a-4(c))
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## ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

On May 30, 2012, Carrols Restaurant Group, Inc. (“Carrols Restaurant Group”), as issuer and the subsidiaries of Carrols Restaurant Group (the “Guarantors”) entered into an Indenture (the “Indenture”) with The Bank of New York Mellon Trust Company, N.A. (the “Trustee”), as trustee, governing \$150 million principal amount of 11.25% Senior Secured Second Lien Notes due 2018 of Carrols Restaurant Group (the “Notes”) sold in a private placement which was consummated on May 30, 2012, as further described in “Item 2.03. Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant” which is incorporated by reference in this Item 1.01.

In connection with the sale of the Notes, on May 30, 2012, Carrols Restaurant Group and the Guarantors entered into a Second Lien Security Agreement (the “Second Lien Security Agreement”) with The Bank of New York Mellon Trust Company, N.A. (the “Collateral Agent”), as collateral agent. Pursuant to the Second Lien Security Agreement, Carrols Restaurant Group and the Guarantors pledged and granted to the Collateral Agent for the benefit of itself, the holders of the Notes and the secured parties specified therein, a second lien on and security interest in all of the right, title and interest in substantially all of the assets of Carrols Restaurant Group and the Guarantors (including a pledge of all of the capital stock and equity interests of the Guarantors), subject to certain exceptions as specified in the Second Lien Security Agreement. The foregoing description of does not purport to be complete and is qualified in its entirety by reference to the Second Lien Security Agreement, which is attached hereto as Exhibit 10.1 and is incorporated by reference herein.

On May 30, 2012, Carrols Restaurant Group and the Guarantors entered into a Registration Rights Agreement (the “Registration Rights Agreement”) with Wells Fargo Securities, LLC, as representative on behalf of the initial purchasers, in connection with the sale of the Notes. In general, the Registration Rights Agreement provides that Carrols Restaurant Group and the Guarantors will agree to file, and cause to become effective and within the time periods specified in the Registration Rights Agreement, a registration statement with the Securities and Exchange Commission (the “SEC”) relating to an offer to holders of the Notes to exchange the Notes for an issue of notes registered under the Securities Act of 1933, as amended, with terms identical to the Notes (the “Exchange Notes”). In general, under the Registration Rights Agreement, Carrols Restaurant Group will be required to file a registration statement for the Exchange Notes with the SEC within 180 days of May 30, 2012 and will be required to consummate the exchange of the Notes for Exchange Notes within 270 days of May 30, 2012. The foregoing description does not purport to be complete and is qualified in its entirety by reference to the Registration Rights Agreement, which is attached hereto as Exhibit 4.3 and is incorporated by reference herein.

On May 30, 2012, Carrols Restaurant Group, as borrower, and the Guarantors, as guarantors, entered into a Credit Agreement dated as of May 30, 2012 (the “Loan Agreement”) with Wells Fargo Bank, National Association, as administrative agent (the “Administrative Agent”), and the lenders party thereto (individually, a “Lender” and, collectively, the “Lenders”) as further described in “Item 2.03. Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant” which is incorporated by reference in this Item 1.01.

In connection with the Loan Agreement, on May 30, 2012, Carrols Restaurant Group and the Guarantors entered into a First Lien Security Agreement (the “First Lien Security Agreement”) the Administrative Agent. Pursuant to the First Lien Security Agreement, Carrols Restaurant Group and the Guarantors pledged and granted to the Administrative Agent for the benefit of the Administrative Agent and the Lenders, a first lien on, and security interest in, all of the right, title

and interest in substantially all of the assets of Carrols Restaurant Group and the Guarantors, subject to certain exceptions as specified in the First Lien Security Agreement. In addition, under the First Lien Security Agreement all of the outstanding capital stock of the direct and indirect subsidiaries of Carrols Restaurant Group was pledged as security to the Administrative Agent for the benefit of the secured parties. The foregoing description does not purport to be complete and is qualified in its entirety by reference to the First Lien Agreement, which is attached hereto as Exhibit 10.2 and is incorporated by reference herein.

On May 30, 2012, Carrols Restaurant Group, Carrols LLC ("Carrols LLC"), an indirect wholly-owned subsidiary of Carrols Restaurant Group, and Burger King Corporation ("BKC") entered into Amendment No.1 to the Asset Purchase Agreement ("Amendment No. 1") which amends the Asset Purchase Agreement (the "Purchase Agreement") dated as of March 26, 2012 among Carrols Restaurant Group, Carrols LLC and BKC. Amendment No. 1 is attached hereto as Exhibit 10.3 and is incorporated by reference herein.

On May 30, 2012, Carrols LLC and BKC entered into an Operating Agreement (the "Operating Agreement"). A summary of the Operating Agreement is set forth in Carrols Restaurant Group's Current Report on Form 8-K filed with the SEC on March 28, 2012 and is incorporated by reference herein. The Operating Agreement is attached hereto as Exhibit 10.4 and is incorporated by reference herein.

On May 30, 2012, Carrols Restaurant Group and BKC entered into a Registration Rights Agreement (the "BKC Registration Rights Agreement"). A summary of the BKC Registration Rights Agreement is set forth in Carrols Restaurant Group's Current Report on Form 8-K filed with the SEC on March 28, 2012 and is incorporated by reference herein. The BKC Registration Rights Agreement is attached as Exhibit 4.2 to Carrols Restaurant Group's Current Report on Form 8-K filed with the SEC on March 28, 2012 and is incorporated by reference herein.

On May 30, 2012, Carrols Restaurant Group entered into a First Amendment to the Voting Agreement (the "Voting Agreement Amendment") with Jefferies Capital Partners IV L.P., Jefferies Employee Partners IV LLC and JCP Partners IV LLC. The Voting Agreement Amendment is attached hereto as Exhibit 10.5 and is incorporated by reference herein.

#### **ITEM 1.02. TERMINATION OF A MATERIAL DEFINITIVE AGREEMENT.**

On May 30, 2012, Carrols LLC repaid all outstanding borrowings and other obligations under its existing senior credit facility which was governed by the Credit Agreement (the "Carrols LLC Loan Agreement"), dated as of August 5, 2011, as amended, by and among Carrols LLC, Wells Fargo Bank, National Association, as administrative agent, M&T Bank, as syndication agent, Regions Bank, as documentation agent and the lenders party thereto. On May 30, 2012, Carrols LLC terminated the Carrols LLC Loan Agreement and all instruments and documents related thereto. All outstanding obligations under the Carrols LLC Loan Agreement were repaid with a portion of the net proceeds from the issuance and sale of \$150 million principal amount of the Notes.

#### **ITEM 2.01. COMPLETION OF ACQUISITION OR DISPOSITION OF ASSETS**

On May 30, 2012, Carrols Restaurant Group completed the acquisition (the "Acquisition") of 278 of BKC's company-owned Burger King® restaurants located in Ohio, Indiana, Kentucky, Pennsylvania, North Carolina, South Carolina and Virginia (the "Acquired Restaurants") for a 28.9% equity ownership interest in Carrols Restaurant Group (subject to the limitations described below), certain cash payments payable at the closing of the transaction of approximately \$2.9 million (subject to adjustment) for cash on hand and inventory at the Acquired Restaurants and other cash payments of approximately \$13.3 million with

approximately \$9.6 million to be paid at closing of the transaction and with the balance to be paid over five years by Carrols LLC to BKC. The cash payment of approximately \$13.3 million is for refranchising fees, for BKC's assignment of its right of first refusal on franchisee restaurant transfers in 20 states and certain other rights granted to Carrols LLC pursuant to the Operating Agreement.

The unaudited condensed combined pro forma financial statements of Carrols Restaurant Group, together with the related notes thereto, giving effect to the spin-off of Fiesta Restaurant Group, Inc. (which was completed on May 7, 2012), the Acquisition, the issuance and sale of \$150 million principal amount of the Notes, and the use of proceeds with respect thereto is attached hereto as Exhibit 99.1.

### **ITEM 2.03. CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT**

On May 30, 2012, Carrols Restaurant Group and the Guarantors entered into the Indenture with the Trustee governing the Notes. The Indenture provides that the Notes will mature on May 15, 2018 and will bear interest at the rate of 11.25% per annum, payable semi-annually on May 15 and November 15 of each year, beginning on November 15, 2012. The entire principal amount of the Notes will be due and payable in full on the maturity date. The Indenture further provides that Carrols Restaurant Group may redeem some or all of the Notes at any time after May 15, 2015 at the redemption prices described therein. In addition, the Indenture also provides that Carrols Restaurant Group may redeem up to 35% of the Notes using the proceeds of certain equity offerings completed before May 15, 2015. The Indenture also provides that Carrols Restaurant Group must offer to purchase the Notes if it sells certain of its assets or if specific kinds of changes in control occur, all as set forth in the Indenture. The Notes are secured by second-priority liens on substantially all of Carrols Restaurant Group's and the Guarantors' assets (including a pledge of all of the capital stock and equity interests of the Guarantors) pursuant to the Second Lien Security Agreement (subject to certain exceptions as specified therein), subject to an intercreditor agreement with the Administrative Agent acting on behalf of the Lenders with respect to the First Lien Security Agreement, and will be guaranteed by each of Carrols Restaurant Group's existing and future Restricted Subsidiaries (as defined in the Indenture). The Indenture contains certain covenants that limit the ability of Carrols Restaurant Group and the Guarantors to, among other things: incur indebtedness or issue preferred stock; incur liens; pay dividends or make distributions in respect of capital stock or make certain other restricted payments or investments; sell assets; agree to payment restrictions affecting Restricted Subsidiaries (as defined in the Indenture); enter into transaction with affiliates; or merge, consolidate or sell substantially all of the assets. Such restrictions are subject to certain exceptions and qualifications all as set forth in the Indenture. The foregoing description of does not purport to be complete and is qualified in its entirety by reference to the Indenture, which is attached hereto as Exhibit 4.1 and is incorporated by reference herein.

Carrols Restaurant Group used (or will use) the net proceeds of the offering of the Notes to (i) repay all outstanding borrowings under the Carrols LLC Loan Agreement (including accrued and unpaid interest) and the settlement of a pre-existing interest rate swap agreement, (ii) pay certain cash payments due upon the closing of the Acquisition, (iii) fund the remodel of acquired and existing Burger King restaurants in accordance with the terms of the Acquisition, (iv) pay related fees and expenses and (v) for working capital and general corporate purposes.

On May 30, 2012, Carrols Restaurant Group and the Guarantors entered into the Loan Agreement. The Loan Agreement provides for a revolving credit facility of \$20.0 million (including a sublimit of up to \$15.0 million for letters of credit). The Loan Agreement also provides that Carrols Restaurant Group has the right to request the Lenders (although they are

under no obligation to make any such loans) for incremental revolving credit borrowing increases of up to \$25.0 million, in the aggregate, in accordance with the terms specified in the Loan Agreement. The Loan Agreement matures on May 30, 2017. Carrols Restaurant Group will use any borrowings under the Loan Agreement to finance ongoing working capital requirements and other general corporate purposes. Carrols Restaurant Group did not make any revolving credit borrowings under the Loan Agreement at closing on May 30, 2012.

Under the Loan Agreement, Carrols Restaurant Group has cash collateralized and secured, with cash deposited in an account with the Administrative Agent, the entire committed amount under the Loan Agreement (currently \$20.0 million) until the date on which its Adjusted Leverage Ratio (as defined in the Loan Agreement) is less than 6.00x for two consecutive fiscal quarters (the “Cash Collateral Release Date”).

Prior to the Cash Collateral Release Date, borrowings under the Loan Agreement will bear interest at a rate per annum, at Carrols Restaurant Group’s option, of (i) the Alternate Base Rate (as defined in the Loan Agreement) plus the applicable margin of 0.75% or (ii) the LIBOR Rate (as defined in the Loan Agreement) plus the applicable margin of 1.75%. Following the Cash Collateral Release Date, borrowings under the Loan Agreement will bear interest at a rate per annum, at Carrols Restaurant Group’s option, of (i) the Alternate Base Rate (as defined in the Loan Agreement) plus the applicable margin of 2.50% to 3.25% based on Carrols Restaurant Group’s Adjusted Leverage Ratio (as defined in the Loan Agreement) or (ii) the LIBOR Rate (as defined in the Loan Agreement) plus the applicable margin of 3.5% to 4.25% based on Carrols Restaurant Group’s Adjusted Leverage Ratio.

Carrols Restaurant Group’s obligations under the Loan Agreement are secured by first priority liens on substantially all of the assets of Carrols Restaurant Group and the Guarantors (including a pledge of all of the capital stock and equity interests of the Guarantors) pursuant to the First Lien Security Agreement.

Under the Loan Agreement, Carrols Restaurant Group will be required to make mandatory prepayments of borrowings in the event of dispositions of assets, debt issuances and insurance and condemnation proceeds (all subject to certain exceptions).

The Loan Agreement contains certain covenants, including, without limitation, those limiting Carrols Restaurant Group’s and the Guarantors’ ability to, among other things, incur indebtedness, incur liens, sell or acquire assets or businesses, change the character of its business in all material respects, engage in transactions with related parties, make certain investments, make certain restricted payments or pay dividends. In addition, the Loan Agreement requires Carrols Restaurant Group to meet certain financial ratios, including Fixed Charge Coverage Ratio and Adjusted Leverage Ratio (all as defined under the Loan Agreement).

Under the Loan Agreement, the Lenders may terminate their obligation to advance and may declare the unpaid balance of borrowings, or any part thereof, immediately due and payable upon the occurrence and during the continuance of customary defaults which include, without limitation, payment default, covenant defaults, bankruptcy type defaults, defaults on other indebtedness, judgments or upon the occurrence of a change of control (as specified therein). The foregoing description of does not purport to be complete and is qualified in its entirety by reference to the Loan Agreement, which is attached hereto as Exhibit 10.6 and is incorporated by reference herein.

### **ITEM 3.03. MATERIAL MODIFICATION TO RIGHTS OF SECURITY HOLDERS**

On May 30, 2012, in connection with the Acquisition, Carrols Restaurant Group issued 100 shares of Series A Convertible Preferred Stock (the “Series A Preferred Stock”) to BKC pursuant to a Certificate of Designation dated as of May 29, 2012 (the “Certificate of Designation”) as further described in “Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year” which is incorporated by reference in this Item 3.03.

### **ITEM 5.02. DEPARTURE OF DIRECTORS OR CERTAIN OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF CERTAIN OFFICERS; COMPENSATORY ARRANGEMENTS OF CERTAIN OFFICERS**

On May 30, 2012, pursuant to the Purchase Agreement, Daniel Schwartz, the Chief Financial Officer of BKC and Steven M. Wiborg, BKC’s President, North America, began serving as Class A Members of Carrols Restaurant Group’s Board of Directors subject to the terms of the Certificate of Designation. Messrs. Schwartz and Wiborg have been appointed to the Carrols Restaurant Group Board of Directors pursuant to BKC’s right to board rights as set forth in the Certificate of Designation, which is further described in Item 5.03 below and is incorporated by reference herein. Other than their roles as executive officers of BKC, which owns 28.9% of Carrols Restaurant Group’s equity interests, in the form of Series A Preferred Stock, Messrs. Schwartz and Wiborg do not have any other relationships with Carrols Restaurant Group that would be required to be reported pursuant to Item 404(a) of Regulation S-K.

### **ITEM 5.03. AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS; CHANGE IN FISCAL YEAR**

On May 30, 2012, in connection with the Acquisition, Carrols Restaurant Group issued 100 shares of Series A Preferred Stock to BKC pursuant to a Certificate of Designation filed with the Secretary of State of Delaware on May 29, 2012 as part of Carrols Restaurant Group’s Certificate of Incorporation in accordance with the General Corporation Law of the State of Delaware, which is convertible into 28.9% of the outstanding shares of Carrols Restaurant Group’s common stock (the “Conversion Shares”) on a fully diluted basis after giving effect to the issuance of the Series A Preferred Stock, subject to certain restrictions limiting the conversion of the Series A Preferred Stock and the issuance of the Conversion Shares to an amount of shares of Carrols Restaurant Group common stock not to exceed 19.9% of the outstanding shares of Carrols Restaurant Group’s common stock as of the date of issuance. A summary of the Certificate of Designation is set forth in Carrols Restaurant Group’s Current Report on Form 8-K filed with the SEC on March 28, 2012 and is incorporated by reference herein.

A copy of the Certificate of Designation is attached hereto as Exhibit 3.1 and is incorporated by reference herein.

### **ITEM 7.01. REGULATION FD DISCLOSURE**

The unaudited condensed pro forma statements of operations of Carrols Restaurant Group for the fiscal years ended December 31, 2009 and 2010, the unaudited condensed combined pro forma statements of operations of Carrols Restaurant Group for the three months ended March 31, 2011 and 2012 and the fiscal year ended December 31, 2011 and the unaudited condensed combined pro forma balance sheet of Carrols Restaurant Group as of March 31, 2012 are filed as Exhibit 99.1 hereto and are incorporated by reference herein.

### **ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS**

#### **(a) Financial Statements of Businesses Acquired**

The audited Statements of Assets Acquired and Liabilities Assumed for the Acquired Restaurants for the twelve-months ended December 31, 2010 and 2011 and the Statements of Revenues and Direct Operating Expenses for the Acquired Restaurants for the year ended December 31, 2009, the period from January 1, 2010 to October 18, 2010, the period from October 19, 2010 to December 31, 2010 and the year ended December 31, 2011 and the Statements of Assets Acquired and Liabilities Assumed for the Acquired Restaurants for the three-months ended March 31, 2012 and the year ended December 31, 2011 and the Statements of Revenues and Direct Operating Expenses for the Acquired Restaurants for the three-months ended March 31, 2012 and 2011 (collectively, the “Special Purpose Financial Statements”) are filed as Exhibit 99.2 to Carrols Restaurant Group’s Current Report on Form 8-K filed with the SEC on May 18, 2012 and are incorporated by reference herein. Financial statements for the Acquired Restaurants prepared in accordance with the requirements of Rule 3-05 of Regulation S-X with respect to the Acquired Restaurants are not available and are not presented because the Acquired Restaurants represent a small portion of the business of BKC, the current owner of the Acquired Restaurants, and BKC has not prepared separate financial statements for the Acquired

Restaurants, nor has it accounted for or managed the Acquired Restaurants separately from its other restaurants. Financial statements for the Acquired Restaurants prepared in accordance with the requirements of Rule 3-05 of Regulation S-X cannot be provided without unreasonable effort and expense. The omission of the financial statements for the Acquired Restaurants prepared in accordance with the requirements of Rule 3-05 of Regulation S-X in this Form 8-K will not have a material impact on an investor's understanding of Carrols Restaurant Group's financial results and condition and related trends.

(b) Pro Forma Financial Information

The pro forma financial information required to be filed pursuant to Item 9.01(b) of Form 8-K will be filed by amendment as soon as practicable, but in no event later than 71 days after the date of this Current Report on Form 8-K is required to be filed.

(d) Exhibits

- 3.1 Carrols Restaurant Group, Inc. Certificate of Designation of Series A Convertible Preferred Stock
- 4.1 Indenture governing the 11.25% Senior Secured Second Lien Notes due 2018, dated as of May 30, 2012, between Carrols Restaurant Group, Inc., the guarantors named therein and The Bank of New York Mellon Trust Company, N.A., as trustee
- 4.2 Form of 11.25% Senior Secured Second Lien Note due 2018 (incorporated by reference to Exhibit 4.1)
- 4.3 Registration Rights Agreement, dated as of May 30, 2012, between Carrols Restaurant Group, Inc., the guarantors named therein and Wells Fargo Securities, LLC
- 10.1 Second Lien Security Agreement, dated as of May 30, 2012, between Carrols Restaurant Group, Inc., the guarantors named therein and The Bank of New York Mellon Trust Company, N.A., as collateral agent
- 10.2 First Lien Security Agreement, dated as of May 30, 2012, between Carrols Restaurant Group, Inc., the guarantors named therein, and Wells Fargo Bank, National Association, as administrative agent
- 10.3 Amendment No. 1 to Asset Purchase Agreement, dated as of May 30, 2012, among Carrols Restaurant Group, Inc., Carrols LLC and Burger King Corporation
- 10.4 Operating Agreement, dated as of May 30, 2012, between Carrols LLC and Burger King Corporation
- 10.5 First Amendment to the Voting Agreement, dated as of May 30, 2012, between Carrols Restaurant Group, Inc. and Jefferies Capital Partners IV L.P., Jefferies Employee Partners IV LLC and JCP Partners IV LLC

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10.6 Credit Agreement, dated as of May 30, 2012, between Carrols Restaurant Group, Inc., the guarantors named therein, the lenders named therein and Wells Fargo Bank, National Association, as administrative agent

99.1 Unaudited Condensed Combined Pro Forma Financial Information of Carrols Restaurant Group, Inc.

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## Signatures

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

CARROLS RESTAURANT GROUP, INC.

Date: June 1, 2012

By: /s/ Paul R. Flanders

Name: Paul R. Flanders

Title: Vice President, Chief Financial Officer and Treasurer

CARROLS RESTAURANT GROUP, INC.  
CERTIFICATE OF DESIGNATION  
OF  
SERIES A CONVERTIBLE PREFERRED STOCK

Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

Carrols Restaurant Group, Inc., a Delaware corporation (the “**Company**”), hereby certifies that:

A. The Restated Certificate of Incorporation of the Company (the “**Certificate of Incorporation**”) fixes the total number of shares of capital stock that the Company shall have the authority to issue at 100,000,000 shares of common stock, par value \$0.01 per share, and 20,000,000 shares of preferred stock, par value \$0.01 per share (the “**Preferred Stock**”).

B. The Certificate of Incorporation expressly vests the Board of Directors of the Company with authority from time to time to provide for the issuance of shares of one or more series of the undesignated Preferred Stock and in connection therewith to fix by resolution or resolutions providing for the issue of any such series, the number of shares to be included therein, the voting powers thereof, and such of the designations, preferences and relative participating, optional or other special rights and qualifications, limitations and restrictions of each such series, including, without limitation, dividend rights, voting rights, rights of redemption, conversion rights, and liquidation preferences.

C. Pursuant to the authority vested in the Board of Directors by the Certificate of Incorporation, the Board of Directors, by action duly taken on March 22, 2012, adopted resolutions establishing a series of Preferred Stock and fixing the designation, powers, preferences and rights of the shares of this series of Preferred Stock and the qualifications, limitations or restrictions thereof as follows:

**Section 1. Designation; Number of Shares; Restrictions.**

(a) *Designation; Number of Shares.* The designation of the series of Preferred Stock shall be “Series A Convertible Preferred Stock” (the “**Series A Convertible Preferred Stock**”). The number of authorized shares of Series A Convertible Preferred Stock shall be 100.

(b) *Legend.* During the Holding Period, each certificate representing Series A Convertible Preferred Stock and Conversion Shares shall include the following legend:

“THE DIRECT OR INDIRECT SALE, ASSIGNMENT, TRANSFER, PLEDGE, OFFER, EXCHANGE, DISPOSITION, ENCUMBRANCE, ALIENATION OR OTHER DISPOSITION (“TRANSFER”), WHETHER BY OPERATION OF LAW

OR OTHERWISE, OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE AND THE ENTERING INTO OF ANY CONTRACT, OPTION OR OTHER AGREEMENT WITH RESPECT TO, OR THE CONSENT TO, A TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE OR THE HOLDER'S VOTING OR ECONOMIC INTEREST THEREIN, BY THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS STRICTLY PROHIBITED IN ACCORDANCE WITH THE CERTIFICATE OF DESIGNATION OF THE SERIES A CONVERTIBLE PREFERRED STOCK OF THE ISSUER, AND ANY TRANSFER MADE, OR CONTRACT, OPTION OR OTHER AGREEMENT ENTERED INTO, IN VIOLATION OF THIS PROHIBITION WILL NOT BE BINDING UPON OR RECOGNIZED BY THE ISSUER."

(c) *Transfer Restriction.* Investor shall not engage in a Prohibited Transfer during the Holding Period. In the event of a Prohibited Transfer during the Holding Period by the Investor and in addition to any other remedies as may be available at law, in equity or under this Certificate of Designation, the Company shall not be required (i) to transfer on its books any Series A Convertible Preferred Stock or any Conversion Shares which shall have been transferred in violation of any of the provisions set forth in this Certificate of Designation; or (ii) to treat as owner of such Series A Convertible Preferred Stock or Conversion Shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom of any Series A Convertible Preferred Stock or any Conversion Shares shall have been transferred in violation of any of the provisions set forth in this Certificate of Designation.

## **Section 2. Definitions.**

Unless the context otherwise requires, each of the terms defined in this Section 2 shall have, for all purposes of this Certificate of Designation, the meaning herein specified (with terms defined in the singular having comparable meanings when used in the plural):

"**Affiliate**" as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and, in addition to the foregoing, a Person shall be deemed to control another Person if the controlling Person owns 20% or more of any class of voting securities (or other ownership interest) of the controlled Person.

"**Board of Directors**" means the Board of Directors of the Company.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

"**By-Laws**" means the Company's Amended and Restated By-Laws, as amended, as in effect on the date of this Certificate of Designation.

**“Capital Stock”** means any and all shares, interests, participations or other equivalents in the equity interest (however designated) in the Company.

**“Certificate of Incorporation”** means the Company’s Restated Certificate of Incorporation, as in effect on the date of this Certificate of Designation.

**“Class A Director”** means each individual elected by the Investor to serve as a member of the Board of Directors pursuant to the terms and subject to the conditions of Section 8 hereof.

**“Common Share Equivalents”** means securities, options, warrants, derivatives, debt instruments or other rights convertible into, or exercisable or exchangeable for, or entitling the holder thereof to receive directly or indirectly, Common Stock.

**“Common Stock”** means the common stock, \$0.01 par value per share, of the Company or any other Capital Stock into which such shares of common stock shall be reclassified or changed.

**“Common Stock Transfer Agent”** has the meaning set forth in Section 6(c) hereof.

**“Company”** means Carrols Restaurant Group, Inc., a Delaware corporation, and its successors and assigns.

**“Company’s Organizational Documents”** means the Certificate of Incorporation, this Certificate of Designations, any other certificate of designations issued pursuant to the Certificate of Incorporation, and the By-Laws.

**“Conversion Number”** has the meaning set forth in Section 6(a) hereof.

**“Conversion Shares”** has the meaning set forth in Section 6(b) hereof.

**“Converted Shares”** has the meaning set forth in Section 6(c).

**“Converting Shares”** has the meaning set forth in Section 6(c).

**“DGCL”** means the General Corporation Law of the State of Delaware.

**“Director Cessation Date”** means the earlier of the (a) first date following the Issue Date on which the number of shares of Common Stock into which the outstanding shares of Series A Convertible Preferred Stock held by the Investor are then convertible constitute less than 10% of the total number of outstanding shares of Common Stock or (b) date on which there is any Prohibited Transfer or attempted Prohibited Transfer during the Holding Period of any Series A Convertible Preferred Stock or any Conversion Shares.

**“Director Step-Down Date”** means the first date following the Issue Date on which the number of shares of Common Stock into which the outstanding shares of Series A Convertible Preferred Stock held by the Investor are then convertible constitute less than 14.5% of the total number of outstanding shares of Common Stock.

**“Holders”** means the record holders of the shares of Series A Convertible Preferred Stock, as shown on the books and records of the Company.

**“Holding Period”** means a three (3) year period commencing on the Issue Date and ending on the third anniversary of the Issue Date.

**“Investor”** means Burger King Corporation, a Florida corporation.

**“Issue Date”** means May 30, 2012.

**“Junior Stock”** has the meaning set forth in Section 3 hereof.

**“Liquidation Event”** means (i) any voluntary or involuntary liquidation, dissolution or winding-up of the Company, (ii) the consummation of a merger or consolidation in which the stockholders of the Company prior to such transaction own less than a majority of the voting securities of the entity surviving such transaction, or (iii) the sale, distribution or other disposition of all or substantially all of the Company’s assets.

**“Liquidation Preference”** has the meaning set forth in Section 5(a) hereof.

**“Market Price”** means the last reported sale price of the Common Stock on the primary U.S. national securities exchange, automated quotation system or inter-dealer quotation system upon which the Common Stock is then traded or quoted.

**“Maximum Number”** means 4,609,203 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalizations affecting the Common Stock).

**“Operating Agreement”** means the Operating Agreement, dated as of May 30, 2012, among Investor and Carrols LLC.

**“Parity Stock”** has the meaning set forth in Section 3 hereof.

**“Person”** includes all natural persons, corporations, business trusts, limited liability companies, associations, companies, partnerships, joint ventures and other entities, as well as governments and their respective agencies and political subdivisions.

**“Prohibited Transfer”** means (a) any Transfer, whether by operation of law or otherwise, of any Series A Convertible Preferred Stock or any Conversion Shares; and (b) the entering into of any contract, option or other agreement with respect to, or consent to, a Transfer of the Series A Convertible Preferred Stock or any Conversion Shares or Investor’s voting or economic interest therein.

**“Remodel Plan”** has the meaning set forth in the Operating Agreement.

**“SEC”** means the United States Securities and Exchange Commission.

**“Senior Stock”** has the meaning set forth in Section 3 hereof.

“**Series A Convertible Preferred Stock**” has the meaning set forth in Section 1 hereof.

“**Stated Value**” means \$0.01 per share of Series A Convertible Preferred Stock, as may be adjusted for any stock split, dividend or similar event relating to the Series A Convertible Preferred Stock.

“**Stockholder Approval**” has the meaning set forth in Section 6(b) hereof.

“**Transfer**” means the direct or indirect sale, assignment, transfer, pledge, offer, exchange, disposition, encumbrance, alienation or other disposition.

“**Transfer Agent**” means the entity designated from time to time by the Company to act as the registrar and transfer agent for the Series A Convertible Preferred Stock or, if no entity has been so designated to act in such capacity, the Company.

### **Section 3. Ranking.**

The Series A Convertible Preferred Stock shall, with respect to rights on the liquidation, winding-up and dissolution of the Company (as provided in Section 5 below), rank (a) senior to all classes of Common Stock and to each other class of Capital Stock or series of Preferred Stock established hereafter by the Board of Directors the terms of which expressly provide that such class ranks junior to the Series A Convertible Preferred Stock as to rights on the liquidation, winding-up and dissolution of the Company (collectively referred to as the “**Junior Stock**”), (b) on a parity with each other class of Capital Stock or series of Preferred Stock established hereafter by the Board of Directors with the written consent of the Holders of at least a majority of the outstanding shares of Series A Convertible Preferred Stock, the terms of which expressly provide that such class or series ranks on a parity with the Series A Convertible Preferred Stock as to rights on the liquidation, winding-up and dissolution of the Company (collectively referred to as the “**Parity Stock**”) and (c) junior to any future class of Preferred Stock established hereafter by the Board of Directors, the terms of which expressly provide that such class ranks senior to the Series A Convertible Preferred Stock as to rights on the liquidation, winding-up and dissolution of the Company (collectively referred to as the “**Senior Stock**”).

The Series A Convertible Preferred Stock shall, with respect to rights to dividends (as provided in Section 4 below), rank on a parity with each class of Common Stock.

### **Section 4. Dividends.**

The Company shall not declare, pay or set aside any dividends on shares of Common Stock (other than dividends on shares of Common Stock payable solely in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Company’s Organizational Documents) the Holders simultaneously receive a dividend on each outstanding share of Series A Convertible Preferred Stock in an amount equal to that dividend per share of Series A Convertible Preferred Stock as would equal the product of the dividend payable on each share of Common Stock and the number of shares of Common Stock then issuable upon conversion of one share of Series A Convertible Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend and without regard to any limitation on conversion set forth in Section 6(b) hereof.

## Section 5. Liquidation Preference.

(a) Except as otherwise provided in Section 6(h), upon any Liquidation Event, each Holder shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders, on account of each share of Series A Convertible Preferred Stock held by such Holder, (i) prior to the holders of any class or series of Common Stock and Junior Stock, (ii) pro rata with the holders of any Parity Stock and (iii) after the holders of any Senior Stock, an amount (such amount, the “**Liquidation Preference**”) equal to the Stated Value.

(b) Except as otherwise provided in Section 6(h), upon any Liquidation Event, after the payment of the Liquidation Preference the remaining assets of the Company available for distribution to its stockholders shall be distributed among the Holders and the holders of the shares of Capital Stock, pro rata, based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of this Certificate of Designation (or any other applicable certificate of designation) immediately prior to such Liquidation Event without regard to any limitation on conversion set forth in Section 6(b) hereof.

## Section 6. Conversion.

(a) *Right to Convert.* Subject to the provisions of Section 6(b) hereof, each Holder shall have the right, upon the delivery of a written notice to the Company, to convert any share of Series A Convertible Preferred Stock held by it into that number of fully paid and nonassessable shares of Common Stock equal to the Conversion Number at the time in effect. Any Holder may convert all or less than all of the shares of Series A Convertible Preferred Stock held by it at any time. Any Holder’s conversion of shares of Series A Preferred Stock under this Section 6(a) shall not be effective unless such Holder has also complied with the provisions set forth in Section 6(c) hereof at the time of delivery of its aforesaid written notice to the Company. The initial “**Conversion Number**” per share of Series A Convertible Preferred Stock shall be 94,145.8; *provided, however*, that the Conversion Number in effect from time to time shall be subject to adjustment as provided hereinafter.

(b) *Limitation on Conversion.* Notwithstanding anything herein to the contrary, the Company shall not issue to any Holder, and the Holders shall not have the right to the issuance of any shares of Common Stock issuable upon conversion of Series A Convertible Preferred Stock (“**Conversion Shares**”), to the extent that such shares, after giving effect to such issuance after conversion and when added to the number of shares of Common Stock previously issued upon the conversion of any shares of Series A Convertible Preferred Stock, would exceed the Maximum Number, unless and until the Company obtains stockholder approval permitting such issuances in accordance with applicable NASDAQ Stock Market Rules (“**Stockholder Approval**”). If on any attempted conversion of Series A Convertible Preferred Stock, the issuance of Conversion Shares, together with all previously issued Conversion Shares, would exceed the Maximum Number, and the Company shall not have previously obtained Stockholder Approval at the time of such conversion, then the Company shall issue to the Holder requesting conversion such number of Conversion Shares as may be issued so that all outstanding Conversion Shares do not exceed the Maximum Number, and the remainder of the aggregate number of Conversion Shares underlying such Series A Convertible Preferred Stock shall not be

issuable until and unless Stockholder Approval has been obtained and shall remain issued and outstanding. Notwithstanding anything herein to the contrary, in no event shall the Company issue or the Holders have the right to the issuance of shares of Common Stock in the aggregate which exceeds the Maximum Number prior to the date and time on which Stockholder Approval has been obtained.

(c) *Conversion Procedures.* Each conversion of shares of Series A Convertible Preferred Stock into shares of Common Stock shall be effected by the surrender of the certificate(s) evidencing the shares of Series A Convertible Preferred Stock to be converted (the “**Converting Shares**”) at the principal office of the Company (or such other office or agency of the Company as the Company may designate by notice in writing to the Holders of the Series A Convertible Preferred Stock) at any time during its usual business hours, together with written notice by the holder of such Converting Shares, (i) stating that the Holder desires to convert the Converting Shares, or a specified number of such Converting Shares, evidenced by such certificate(s) into shares of Common Stock (the “**Converted Shares**”), and (ii) giving the name(s) (with addresses) and denominations in which the Converted Shares should either be registered with the Company’s transfer agent and registrar for the Common Stock (the “**Common Stock Transfer Agent**”) on its records in book-entry form under The Direct Registration System or certificated, and, in either case, instructions for the delivery of a statement evidencing book-entry ownership of the Converted Shares or the certificates evidencing the Converted Shares. Upon receipt of the notice described in the first sentence of this Section 6(c), together with the certificate(s) evidencing the Converting Shares, the Company shall be obligated to, and shall, cause to be issued and delivered in accordance with such instructions, as applicable, either (x) a statement from the Common Stock Transfer Agent evidencing ownership of the Converted Shares, registered in the name of the Holder or its designee on the Common Stock Transfer Agent’s records in book-entry form under The Direct Registration System or (y) certificate(s) evidencing the Converted Shares and, if applicable, a certificate (which shall contain such applicable legends, if any, as were set forth on the surrendered certificate(s)) representing any shares which were represented by the certificate(s) surrendered to the Company in connection with such conversion but which were not Converting Shares and, therefore, were not converted. All or some Converted Shares so issued whether in book-entry form under the Direct Registration System or in certificated form may be subject to restrictions on transfer as required by applicable federal and state securities laws. Any such Converted Shares subject to restrictions on transfer under applicable federal and state securities laws shall be encumbered by stop transfer orders and restrictive legends (or equivalent encumbrances). Such conversion, to the extent permitted by law, shall be deemed to have been effected as of the close of business on the date on which such certificate(s) shall have been surrendered and such written notice shall have been received by the Company unless a later date has been specified by such Holder, and at such time the rights of the Holder of such Converting Shares as such Holder shall cease, and the Person(s) in whose name or names the Converted Shares are to be issued either in book-entry form or certificated form, as applicable, upon such conversion shall be deemed to have become the holder(s) of record of the Converted Shares.

(d) *Effect of Conversion.* Upon the issuance of the Converted Shares in accordance with Section 6, such shares shall be deemed to be duly authorized, validly issued, fully paid and non-assessable.

(e) *Adjustments for Common Stock Dividends and Distributions.* If the Company at any time or from time to time makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Conversion Number then in effect shall be increased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Conversion Number then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date. To the extent an adjustment is made in respect of the foregoing pursuant to Section 6(f) or the Holder actually receives the dividend to which any such adjustment relates, an adjustment shall not be made pursuant to this Section 6(e).

(f) *Conversion Number Adjustments for Subdivisions, Combinations or Consolidations of Common Stock.*

(i) In the event the Company should at any time or from time to time fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of shares of Common Stock entitled to receive a dividend or other distribution payable in additional Common Share Equivalents, without payment of any consideration by such holder for additional Common Share Equivalents (including the additional Common Stock issuable upon conversion, exchange or exercise thereof), then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Number then in effect shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each such share of such Series A Convertible Preferred Stock shall be increased in proportion to such increase of outstanding shares of Common Stock and shares issuable with respect to Common Share Equivalents.

(ii) If the number of shares of Common Stock outstanding at any time is decreased by a combination, consolidation, reclassification or reverse stock split of the outstanding shares of Common Stock or other similar event, then, following the record date of such combination, the Conversion Number then in effect shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each such share of such Series A Convertible Preferred Stock shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

(g) *Recapitalizations.* If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination, merger or sale of assets transaction provided for elsewhere in this Section 6), provision shall be made so that the Holders shall thereafter be entitled to receive upon conversion of the Series A Convertible Preferred Stock the number of shares of Capital Stock or other securities or property of the Company to which a holder of Common Stock would have been entitled on recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 6 with respect to the rights of the Holders after the recapitalization to the end that the provisions of this Section 6 (including adjustment of the Conversion Number then in effect and the number of shares issuable upon conversion of the Series A Convertible Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(h) *Mergers and Other Reorganizations.* If at any time or from time to time there shall be a reclassification of the Common Stock (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 6) or a merger or consolidation of the Company with or into another entity or the sale of all or substantially all of the Company's properties and assets to any other Person, then, as a part of and as a condition to the effectiveness of such reclassification, merger, consolidation or sale, lawful and adequate provision shall be made so that the Holders shall thereafter be entitled to receive upon conversion of the Series A Convertible Preferred Stock the number of shares of Capital Stock or other securities or property, if any, of the Company or of the successor entity resulting from such reclassification, merger or consolidation or sale, to which a holder of Common Stock deliverable upon conversion would have been entitled in connection with such reclassification, merger, consolidation or sale. In any such case, appropriate provision shall be made with respect to the rights of the Holders after the reclassification, merger, consolidation or sale to the end that the provisions of this Section 6 (including, without limitation, provisions for adjustment of the Conversion Number and the number of shares purchasable upon conversion of the Series A Convertible Preferred Stock) shall thereafter be applicable, as nearly as may be, with respect to any shares of Capital Stock, securities or property to be deliverable thereafter upon the conversion of the Series A Convertible Preferred Stock.

Each Holder, upon the occurrence of a reclassification, merger or consolidation of the Company or the sale of all or substantially all its assets and properties, as such events are more fully set forth in the first paragraph of this Section 6(h), shall have the option of electing treatment of its shares of Series A Convertible Preferred Stock under either this Section 6(h) or Section 5 hereof, notice of which election shall be submitted in writing to the Company at its principal offices no later than ten (10) days before the effective date of such event, provided that any such notice of election shall be effective if given not later than fifteen (15) days after the date of the Company's notice pursuant to Section 6(i) hereof with respect to such event, and, provided, further, that if any Holder fails to give the Company such notice of election, the provisions of this Section 6(h) shall govern the treatment of such Holder's shares of Series A Convertible Preferred Stock upon the occurrence of such event.

(i) *Notices of Record Date.* In the event (i) the Company fixes a record date to determine the holders of Common Stock who are entitled to receive any dividend or other distribution, or (ii) there occurs any capital reorganization of the Company, any reclassification or recapitalization of the Common Stock of the Company, any merger or consolidation of the Company, or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each Holder at least ten (10) days prior to the record date specified therein, a notice specifying (a) the date of such record date for the purpose of such dividend or distribution and a description of such dividend or distribution, (b) the date on which any such reorganization, reclassification, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (c) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock or other securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, dissolution, liquidation or winding up.

(j) *No Impairment.* The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 6 and in the taking of all such actions as may be necessary or appropriate in order to protect the conversion rights of the Holders against impairment.

(k) *Fractional Shares and Certificate as to Adjustments.* In lieu of any fractional shares to which a Holder would otherwise be entitled upon conversion, the Company shall pay cash equal to such fraction multiplied by the Market Price of one share of Common Stock, as determined in good faith by the Board of Directors. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Convertible Preferred Stock of each Holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

Upon the occurrence of each adjustment or readjustment of the Conversion Number of any share of Series A Convertible Preferred Stock pursuant to this Section 6, the Company, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each Holder a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of any Holder, furnish or cause to be furnished to such Holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Number at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such Holder's shares of Series A Convertible Preferred Stock. The provisions of Section 6(e), (f), (g) and (h) shall apply to any transaction and successively to any series of transactions that would require any adjustment pursuant thereto.

(l) *Reservation of Stock Issuable Upon Conversion.* The Company shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Convertible Preferred Stock (taking into account the adjustments required by this Section 6), such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Convertible Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Convertible Preferred Stock, in addition to such other remedies as shall be available to the Holders, the Company will, as soon as is reasonably practicable, take all such action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

## Section 7. Voting Rights.

(a) *General.* Each Holder, except as otherwise required under the DGCL or as set forth herein (including, without limitation, in Sections 7(b), 7(c) and 8 below), shall be entitled or permitted to vote on all matters required or permitted to be voted on by the holders of Common Stock of the Company and shall be entitled to that number of votes equal to the largest number of whole shares of Common Stock into which such Holder's shares of the Series A Convertible Preferred Stock could then be converted, pursuant to the provisions of Section 6 hereof, at the record date for the determination of stockholders entitled to vote on such matter or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as otherwise expressly provided herein or as otherwise required by law, the Series A Convertible Preferred Stock and the Common Stock shall vote together (or render written consents in lieu of a vote) as a single class on all matters upon which the Common Stock is entitled to vote.

(b) *Limitation on Voting.* Notwithstanding anything herein to the contrary, unless and until such time as the Stockholder Approval is obtained, the Company shall not give effect to any voting rights of the Series A Convertible Preferred Stock (or any previously issued Converted Shares) pursuant to Section 7(a) hereof, and any Holder shall not have the right to exercise voting rights with respect to any Series A Convertible Preferred Stock pursuant to Section 7(a) hereof, to the extent that giving effect to such voting rights would result in the Holders (together with any Holders of previously issued Converted Shares) having the right to vote in the aggregate shares in excess of the Maximum Number, and in any such case the aggregate voting rights of all such Holders shall be proportionately reduced such that they are entitled to vote, in the aggregate, that number of shares equal to the Maximum Number.

(c) *Voting by Investor With Respect to Certain Matters.* In addition to any other rights provided by law or set forth herein, during the period commencing on the Issue Date and ending on the Director Cessation Date, the Company shall not without first obtaining the approval (by vote or written consent, as provided by law) of the Investor:

(i) approve the Company's annual budget for each of the first two full fiscal years immediately following the Issue Date;

(ii) modify the Remodel Plan;

(iii) alter, amend or repeal the Company's Organizational Documents;

(iv) amend the size of the Board of Directors (other than pursuant to Section 8 hereof);

(v) authorize or consummate any Liquidation Event, except as permitted pursuant to the Operating Agreement;

(vi) engage in any business other than the ownership, operation, development and acquisition of Burger King restaurants and matters incidental thereto; *provided* that this clause (vi) shall not apply from and after the occurrence of any bankruptcy filing or reorganization or insolvency proceeding by or against Burger King Holdings, Inc. or Burger King Corporation or their respective successors or assigns, which filing shall not have been dismissed within 60 days;

(vii) issue, in any single transaction or series of related transactions, shares of Common Stock in an amount exceeding 35% of the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance;

(viii) declare or pay any special cash dividend;

(ix) except for management fees or transactions entered into or contemplated on or prior to the Issue Date and included in the Company's public filings with the SEC (including, without limitation, pursuant to any agreements entered into in connection with the spin-off of Fiesta Restaurant Group, Inc. by the Company), approve or pay any management fee or enter into any other transaction with Affiliates of the Company or its subsidiaries, or permit subsidiaries of the Company to enter into any transaction with Affiliates of the Company or its subsidiaries; or

(x) initiate or settle any lawsuit (other than with respect to any Holder) in which the damages (or claimed damages, as applicable) would exceed U.S. \$10 million.

#### **Section 8. Board Representation.**

(a) On the Issue Date, the Board of Directors shall set the size of the Board of Directors at seven and shall cause two of the director positions to be filled by two Class A Directors upon the receipt of written notice from the Investor. The Class A Directors shall be a separate class of directors on the Board of Directors from the Class I, Class II and Class III directors of the Board of Directors. Class A Directors shall be elected by the Investor for terms expiring at the next annual meeting of stockholders.

(b) From the Issue Date until the Director Step-Down Date, the Investor, voting as a separate class, shall have the right to elect two Class A Directors to the Board of Directors at each annual meeting of stockholders or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office any such Class A Director and to fill any vacancy caused by the resignation, death or removal of any such Class A Director. Each share of Series A Convertible Preferred Stock shall be entitled to one vote and any election or removal of the Class A Director shall be subject to the affirmative vote of the Investor. On the Director Step-Down Date, the Investor shall cause one Class A Director to submit his or her resignation as a Class A Director to the Board of Directors; provided that if such Class A Director does not resign as a Class A Director on the Director Step-Down Date, the Board of Directors may vote to remove such Class A Director without cause at any time following the Director Step-Down Date.

(c) From the Director Step-Down Date until the Director Cessation Date, the Investor, voting as a separate class, shall have the right to elect one Class A Director to the Board of Directors at each annual meeting of stockholders or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such Class A Director and to fill any vacancy caused by the resignation, death or removal of such Class A Director. Each share of Series A Convertible Preferred Stock shall be entitled to one vote and any election or removal of the Class A Director shall be subject to the affirmative vote of the Investor. On the Director Cessation Date, the Investor shall cause all Class A Directors to submit his or her resignation as Class A Directors to the Board of Directors; provided that if such

Class A Director(s) does or do not resign as a Class A Director or as Class A Directors, as the case may be, on the Director Cessation Date, the Board of Directors may vote to remove such Class A Director(s) without cause at any time following the Director Cessation Date.

(d) Each Class A Director, in his capacity as a member of the Board of Directors, shall be afforded the same rights and privileges as the other members of the Board of Directors, including, without limitation, rights to indemnification, insurance, notice, information and the reimbursement of expenses. Nothing in this paragraph (d) is intended to limit any such Class A Director's rights to indemnification, and the rights set forth herein are in addition to any and all other rights to indemnification.

#### **Section 9. Reissuance of Shares of Series A Convertible Preferred Stock.**

Shares of Series A Convertible Preferred Stock that have been issued and reacquired in any manner, including shares purchased, redeemed, converted or exchanged, shall (upon compliance with any applicable provisions of the DGCL) be permanently retired or cancelled and shall not under any circumstances be reissued. The Company shall from time to time take such appropriate action as may be required by applicable law to reduce the authorized number of shares of Series A Convertible Preferred Stock by the number of shares that have been so reacquired.

#### **Section 10. Notices.**

Any and all notices, consents, approval or other communications or deliveries required or permitted to be provided under this Certificate of Designation shall be in writing and shall be deemed given and effective on the earliest of (a) the date of receipt, if such notice, consent, approval or other communication is delivered by hand (with written confirmation of receipt) or via facsimile to the Company or the Holders, as applicable, at the facsimile number specified in the register of Holders of Series A Convertible Preferred Stock maintained by the Transfer Agent prior to 5:00 p.m. (New York City time) on a Business Day, (b) the next Business Day after the date of receipt, if such notice, consent, approval or other communication is delivered via facsimile to the Company or the Holder, as applicable, at the facsimile number specified in the register of Holders of Series A Convertible Preferred Stock maintained by the Transfer Agent on a day that is not a Business Day or later than 5:00 p.m. (New York City time) on any Business Day, or (c) the third Business Day following the date of deposit with a nationally recognized overnight courier service for next Business Day delivery and addressed to the Company or the Holder, as applicable, at the address specified in the register of Holders of Series A Convertible Preferred Stock maintained by the Transfer Agent.

#### **Section 11. Headings.**

The headings of the various sections and subsections hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

#### **Section 12. Severability of Provisions.**

If any powers, preferences and relative, participating, optional and other special rights of the Series A Convertible Preferred Stock and the qualifications, limitations and restrictions

thereof set forth in this Certificate of Designation (as it may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule or law or public policy, all other powers, preferences and relative, participating, optional and other special rights of the Series A Convertible Preferred Stock and the qualifications, limitations and restrictions thereof set forth in this Certificate of Designation (as so amended) which can be given effect without the invalid, unlawful or unenforceable powers, preferences and relative, participating, optional and other special rights of the Series A Convertible Preferred Stock and the qualifications, limitations and restrictions thereof shall, nevertheless, remain in full force and effect, and no powers, preferences and relative, participating, optional or other special rights of the Series A Convertible Preferred Stock and the qualifications, limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such powers, preferences and relative, participating, optional or other special rights of Preferred Stock and qualifications, limitations and restrictions thereof unless so expressed herein.

***[Intentionally Left Blank; Signature Page Follows]***

**IN WITNESS WHEREOF**, this Certificate of Designation has been executed on behalf of the Company by its VP, GC and Secretary this 29th day of May, 2012.

CARROLS RESTAURANT GROUP, INC.

By: /s/ William E. Myers

Name: William E. Myers

Title: VP, GC and Secretary

*Signature Page to Certificate of Designation*

CARROLS RESTAURANT GROUP, INC.,  
as Issuer

THE GUARANTORS PARTY HERETO FROM TIME TO TIME,  
as Guarantors

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11.25% SENIOR SECURED SECOND LIEN NOTES DUE 2018

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INDENTURE

DATED AS OF MAY 30, 2012

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THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee

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## EXHIBITS

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Exhibit E	FORM OF SUPPLEMENTAL INDENTURE IN RESPECT OF GUARANTEE

This Indenture, dated as of May 30, 2012, is by and among Carrols Restaurant Group, Inc., a Delaware corporation (the “*Issuer*”), the Guarantors (as defined herein) and The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee (in such capacity and not in its individual capacity, the “*Trustee*”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the holders of (i) the Issuer’s 11.25% Senior Secured Second Lien Notes due 2018 issued on the date hereof that contain the restrictive legend in Exhibit A (the “*Initial Notes*”), (ii) Exchange Notes issued in exchange for the Initial Notes pursuant to the Registration Rights Agreement (as defined herein) or pursuant to an effective registration statement under the Securities Act (as defined herein) without the restrictive legends in Exhibit A (the “*Exchange Notes*”) and (iii) Additional Notes (as defined herein) issued from time to time (together with the Initial Notes and the Exchange Notes, the “*Notes*”).

## ARTICLE I

### DEFINITIONS AND INCORPORATION BY REFERENCE

#### SECTION 1.1 Definitions.

“*Acquired Debt*” means Debt of a Person (including an Unrestricted Subsidiary) existing at the time such Person becomes a Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person.

“*Additional Interest*” means all amounts, if any, payable pursuant to the Registration Rights Agreement.

“*Additional Notes*” means Notes (other than the Initial Notes) issued pursuant to Article II hereof and otherwise in compliance with the provisions of this Indenture.

“*Affiliate*” of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings that correspond to the foregoing.

“*Agent*” means any Registrar, Paying Agent (so long as Trustee serves in such capacity) or co-registrar.

“*Applicable Premium*” means, as calculated by the Issuer, with respect to any Note on any applicable redemption date, the greater of:

(1) 1.0% of the then outstanding principal amount of the Note; and

(2) the excess of:

(a) the present value at such redemption date of (i) the Redemption Price of the Note at May 15, 2015 (such Redemption Price being set forth in the table appearing in Section 3.7(b)) plus (ii) all required interest payments due on the Note through May 15, 2015 (excluding accrued but unpaid interest), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over

(b) the then outstanding principal amount of the Note.

“*Applicable Procedures*” means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depository that apply to such transfer or exchange.

“Asset Acquisition” means:

- (i) an Investment by the Issuer or any Restricted Subsidiary in any other Person pursuant to which such Person shall become a Restricted Subsidiary, or shall be merged with or into the Issuer or any Restricted Subsidiary; or
- (ii) the acquisition by the Issuer or any Restricted Subsidiary of the assets of any Person which constitute all or substantially all of the assets of such Person, any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business and consistent with past practices.

“Asset Sale” means (x) any transfer, conveyance, sale, lease or other disposition (including, without limitation, dispositions pursuant to any consolidation or merger) by the Issuer or any Restricted Subsidiary to any Person (other than to the Issuer or one or more Restricted Subsidiaries) in any single transaction or series of transactions of:

- (i) Capital Interests in another Person (other than Capital Interests in the Issuer or directors’ qualifying shares or shares or interests required to be held by foreign nationals pursuant to local law); or
- (ii) any other property or assets (other than in the normal course of business, including any sale or other disposition of obsolete or permanently retired equipment and any sale of inventory in the ordinary course of business); or
- (y) an Event of Loss;

provided, however, that the term “Asset Sale” shall exclude:

- (a) any asset disposition permitted by Section 5.1 that constitutes a disposition of all or substantially all of the assets of the Issuer and the Restricted Subsidiaries taken as a whole;
- (b) any single transaction or series of related transactions that involve the sale of assets or sale of Capital Interests of a Restricted Subsidiary having a Fair Market Value of less than \$2.5 million;
- (c) sales or other dispositions of cash or Eligible Cash Equivalents;
- (d) sales of interests in Unrestricted Subsidiaries;
- (e) the sale and leaseback of any assets (other than Real Property that is acquired for the purpose of serving as a restaurant) within 180 days of the acquisition thereof;
- (f) the sale and leaseback of any Real Property that is acquired for the purpose of serving as a restaurant within 365 days of the acquisition thereof;
- (g) the disposition of assets that, in the good faith judgment of the Board of Directors or management of the Issuer, are no longer used or useful in the business of such entity;
- (h) a Restricted Payment or Permitted Investment that is otherwise permitted by this Indenture;
- (i) the sale or lease of equipment or inventory in the ordinary course of business;
- (j) the creation of a Lien (but not the sale or other disposition of the property subject to such Lien);

(k) leases or subleases in the ordinary course of business to third persons not interfering in any material respect with the business of the Issuer or any of the Restricted Subsidiaries and otherwise in accordance with the provisions of this Indenture;

(l) dispositions of accounts receivable in connection with the collection or compromise thereof in the ordinary course of business;

(m) licensing of intellectual property in accordance with industry practice in the ordinary course of business, including, without limitation, pursuant to any franchise agreements; or

(n) an issuance of Capital Interests by a Restricted Subsidiary to the Issuer or to another Restricted Subsidiary.

For purposes of this definition, any series of related transactions that, if effected as a single transaction, would constitute an Asset Sale shall be deemed to be a single Asset Sale effected when the last such transaction which is a part thereof is effected.

“*Asset Sale Offer*” means an Offer to Purchase required to be made by the Issuer pursuant to Section 4.10 to all Holders.

“*Average Life*” means, as of any date of determination, with respect to any Debt, the quotient obtained by dividing (i) the sum of the products of (x) the number of years from the date of determination to the dates of each successive scheduled principal payment (including any sinking fund or mandatory redemption payment requirements) of such Debt multiplied by (y) the amount of such principal payment by (ii) the sum of all such principal payments.

“*Bank Lender*” means any Lender or holder of Debt under the Revolving Credit Agreement.

“*Bank Product*” means any services or facilities provided to the Issuer or any Guarantor by any Bank Lender, or any of their respective Affiliates including, without limitation, Hedging Obligations.

“*Bankruptcy Law*” means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

“*Beneficial Owner*” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act.

“*Board of Directors*” means (i) with respect to the Issuer or any Restricted Subsidiary, its board of directors or, other than for purposes of the definition of “Change of Control,” any duly authorized committee thereof; (ii) with respect to any other corporation, the board of directors of such corporation or any duly authorized committee thereof; and (iii) with respect to any other entity, the board of directors or similar body of the general partner or managers of such entity or any duly authorized committee thereof.

“*Board Resolution*” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Issuer or any Restricted Subsidiary to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification and delivered to the Trustee.

“*Burger King Acquisition*” means the acquisition by the Issuer of approximately 278 company-owned Burger King restaurants in Ohio, Indiana, Kentucky, Pennsylvania, North Carolina, South Carolina and Virginia pursuant to the Burger King Acquisition Agreement.

“*Burger King Acquisition Agreement*” means that certain asset purchase agreement dated as of March 26, 2012, as amended, among the Issuer, Carrols LLC and Burger King Corporation relating to the Burger King Acquisition.

“*Burger King Corporation*” means Burger King Corporation, a Florida corporation.

“*Burger King Operating Agreement*” means that certain operating agreement to be dated as of the Issue Date between Carrols LLC and Burger King Corporation entered into in connection with the Burger King Acquisition.

“*Burger King Rights*” means the rights (if any) of Burger King Corporation under each Franchise Agreement, pursuant to which Burger King Corporation shall be entitled to: (a) prior written notice of any sale of all or substantially all of the Capital Interests of the Issuer or any Restricted Subsidiary; (b) a right of first refusal to purchase all or substantially all of the Capital Interests of the Issuer or any Restricted Subsidiary or of all or substantially all of the assets of a restaurant subject to a Franchise Agreement in connection with a sale thereof; (c) prior approval of any sale of all or substantially all of the Capital Interests of the Issuer or any Restricted Subsidiary; and (d) prior written consent of the sale, assignment, transfer, conveyance or give-away of substantially all of the assets of any restaurant subject to a Franchise Agreement; in each case to the extent set forth in a legally binding Franchise Agreement.

“*Business Day*” means any day other than a Legal Holiday.

“*Capital Interests*” in any Person means any and all shares, interests (including preferred interests, restricted stock interests and stock options, warrants and other convertible instruments), participations or other equivalents in the equity interest (however designated) in such Person and any rights (other than Debt securities convertible into an equity interest), warrants or options to acquire an equity interest in such Person.

“*Capital Lease Obligations*” means any obligation under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of Debt represented by such obligation shall be the capitalized amount of such obligations determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of Section 4.12, a Capital Lease Obligation shall be deemed secured by a Lien on the Property being leased.

“*Certificated Notes*” means Notes that are in the form of Exhibit A attached hereto.

“*Carrols Officer*” means each of Daniel T. Accordinio, Paul R. Flanders, Timothy J. LaLonde and William E. Myers.

“*Change of Control*” means the occurrence of any of the following events:

(i) the acquisition by any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, that is or becomes the “beneficial owner” (as such term is used in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (i) such person or group or Permitted Holder shall be deemed to have “beneficial ownership” of all shares that any such person or group has the right to acquire by conversion or exercise of other securities, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the Voting Interests in the Issuer;

(ii) following the Issue Date, during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Issuer (together with any new directors whose election by the Board of Directors or whose nomination for election by the equity holders of the Issuer was approved by a vote of a majority of the directors of the Issuer then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Issuer’s Board of Directors then in office; or

(iii) the Issuer sells, conveys, transfers or leases (either in one transaction or a series of related transactions) all or substantially all of the Issuer’s assets (determined on a consolidated basis) to any Person (other than a Person that is controlled by any of the Permitted Holders), or the Issuer consolidates with or merges into another Person or any Person consolidates with or merges into the Issuer other than pursuant to a transaction in which the holders of the Voting Interests in the Issuer immediately prior to such transaction own, directly or indirectly, not less than a majority of the Voting Interests of the surviving corporation immediately after such transaction in substantially the same proportion as before the transaction.

“*Change of Control Payment*” has the meaning set forth in Section 4.14.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

“*Collateral*” means all of the assets of the Issuer and the Guarantors, whether real, personal or mixed, with respect to which a Lien is granted (or purported to be granted) as security for any Obligations pursuant to the Notes and the Note Guarantees and any Permitted Additional Pari Passu Obligations (including proceeds and products thereof).

“*Collateral Agent*” means The Bank of New York Mellon Trust Company, N.A., a national banking association.

“*Commission*” means the Securities and Exchange Commission and any successor thereto.

“*Consolidated EBITDA*” means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication, the following to the extent deducted in computing such Consolidated Net Income:

- (i) Consolidated Income Tax Expense (other than income tax expense (either positive or negative) attributable to extraordinary gains or losses); *plus*
- (ii) the Consolidated Interest Expense of such Person and the Restricted Subsidiaries for such period; *plus*
- (iii) the aggregate depreciation, amortization (including amortization of goodwill and other intangibles) and other Consolidated Non-cash Charges, including straight line rent expense and pension expense, to the extent non-cash; *plus*
- (iv) Preopening Costs associated with new restaurant store openings, not to exceed \$300,000 in the aggregate per restaurant; *plus*
- (v) non-capitalized expenses relating to restaurant remodels, not to exceed \$1,500,000 in the aggregate in any four-quarter period; *minus*
- (vi) non-cash items increasing such Consolidated Net Income, other than (a) the accrual of revenue or recording of receivables in the ordinary course of business and (b) reversals of prior accruals or reserves for cash items previously excluded in computing depreciation, amortization or Consolidated Non-cash Charges.

In addition to and without limitation of the foregoing, “*Consolidated EBITDA*” shall be calculated after giving effect, on a pro forma basis for the period of such calculation, to the Burger King Acquisition, the Spin-Off, any Asset Sales or Asset Acquisitions, investments and discontinued operations (as determined in accordance with GAAP) and designations of any Restricted Subsidiary to be an Unrestricted Subsidiary or any Unrestricted Subsidiary to be a Restricted Subsidiary occurring during the Four-Quarter Period or any time subsequent to the last day of the Four-Quarter Period and on or prior to the Transaction Date, as if the Burger King Acquisition, the Spin-Off, such Asset Sale (including any associated repayment of Debt) or Asset Acquisition (including the incurrence or assumption of any associated Acquired Debt), investment, disposed operation or designation occurred on the first day of the Four-Quarter Period. For purposes of this definition, pro forma calculations shall be made in accordance with Article 11 of Regulation S-X promulgated under the Securities Act.

“*Consolidated EBITDAR*” means, with respect to the Issuer and its Restricted Subsidiaries for any period, the Consolidated EBITDA of such Person for such period plus Net Rent.

“*Consolidated Fixed Charge Coverage Ratio*” means, with respect to any Person, the ratio of the aggregate amount of Consolidated EBITDA of such Person for the four full fiscal quarters, treated as one period, for which financial information in respect thereof is available immediately preceding the date of the transaction (the “*Transaction Date*”) giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio (such four full fiscal quarter period being referred to herein as the “*Four-Quarter Period*”) to the aggregate amount of Consolidated Fixed Charges of such Person for the Four-Quarter Period. In addition to and without limitation of the foregoing, for purposes of this definition, “Consolidated Fixed Charges” shall be calculated after giving effect, on a pro forma basis for the period of such calculation, to the Burger King Acquisition, the Spin-Off, any Asset Sales or Asset Acquisitions, investments and discontinued operations (as determined in accordance with GAAP) and designations of any Restricted Subsidiary to be an Unrestricted Subsidiary or any Unrestricted Subsidiary to be a Restricted Subsidiary occurring during the Four-Quarter Period or any time subsequent to the last day of the Four-Quarter Period and on or prior to the Transaction Date, as if the Burger King Acquisition, the Spin-Off, such Asset Sale (including any associated repayment of Debt) or Asset Acquisition (including the incurrence or assumption of any associated Acquired Debt), investment, disposed operation or designation occurred on the first day of the Four-Quarter Period. For purposes of this definition, pro forma calculations shall be made in accordance with Article 11 of Regulation S-X promulgated under the Securities Act.

The Consolidated Fixed Charge Coverage Ratio shall be calculated on a pro forma basis as if any such Debt being Incurred (including any other Debt being Incurred contemporaneously), and any other Debt Incurred since the beginning of the Four-Quarter Period, had been Incurred and the proceeds thereof had been applied at the beginning of the Four-Quarter Period, and any other Debt repaid since the beginning of the Four-Quarter Period had been repaid at the beginning of the Four-Quarter Period; *provided* that for purposes of calculating the Consolidated Fixed Charge Coverage Ratio, the aggregate outstanding amount under the Revolving Credit Agreement shall be based on the average daily outstanding principal balance under such facility during the applicable Four-Quarter Period; *provided, further*, that to the extent that and so long as outstanding amounts under the Revolving Credit Facility are cash collateralized pursuant to the terms thereof, such amounts shall be treated as not outstanding and shall be excluded from the calculation of Secured Debt and Consolidated EBITDAR for purposes of calculating the Consolidated Fixed Charge Coverage Ratio. Furthermore, interest on Debt determined on a fluctuating basis, to the extent such interest is covered by agreements relating to Hedging Obligations, shall be deemed to accrue at the rate per annum resulting after giving effect to the operation of these agreements.

If such Person or any of its Restricted Subsidiaries directly or indirectly Guarantees Debt of a third Person, the above clause shall give effect to the incurrence of such Guaranteed Debt as if such Person or such Subsidiary had directly incurred or otherwise assumed such Guaranteed Debt.

“*Consolidated Fixed Charges*” means, with respect to any Person for any period, the sum of, without duplication, the amounts for such period of:

(i) Consolidated Interest Expense; and

(ii) the product of (a) all dividends and other distributions paid or accrued (other than dividends or other distributions paid or accruing in Qualified Capital Interests or Capital Interests in Fiesta Restaurant Group, Inc. distributed in connection with the Spin-Off) during such period in respect of Redeemable Capital Interests of such Person and its Restricted Subsidiaries, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state, provincial and local statutory tax rate of such Person, expressed as a decimal.

“*Consolidated Income Tax Expense*” means, with respect to any Person for any period, the provision for federal, state, local and foreign income taxes and state franchise taxes of such Person and the Restricted Subsidiaries for such period as determined on a consolidated basis in accordance with GAAP.

“Consolidated Interest Expense” means, with respect to any Person for any period, without duplication, the sum of:

(i) the interest expense of such Person and the Restricted Subsidiaries for such period as determined on a consolidated basis in accordance with GAAP, including, without limitation:

(a) any amortization of debt discount;

(b) the net cost under non-speculative Hedging Obligations (including any amortization of discounts);

(c) the interest portion of any deferred payment obligation;

(d) all commissions, discounts and other fees and charges owed with respect to letters of credit, bankers’ acceptance financing or similar activities; and

(e) all accrued interest; *plus*

(ii) the interest component of Capital Lease Obligations paid, accrued and/or scheduled to be paid or accrued by such Person and the Restricted Subsidiaries during such period determined on a consolidated basis in accordance with GAAP; *plus*

(iii) the interest expense on any Debt guaranteed by such Person and the Restricted Subsidiaries; *plus*

(iv) all capitalized interest of such Person and the Restricted Subsidiaries for such period;

*provided, however*, that Consolidated Interest Expense will exclude the amortization or write-off of debt issuance costs and deferred financing fees, commissions, fees and expenses.

“Consolidated Lease Adjusted Secured Leverage Ratio” means, with respect to any Person, the ratio of (1) the aggregate amount of Secured Debt of such Person and its Restricted Subsidiaries as of the Transaction Date (determined on a consolidated basis in accordance with GAAP) *plus* 8.0x Net Rent for the Four-Quarter Period to (2) Consolidated EBITDAR for the Four-Quarter Period.

In addition to and without limitation of the foregoing, for purposes of this definition, “Secured Debt” and “Net Rent” shall be calculated after giving effect, on a pro forma basis for the period of such calculation, to the Burger King Acquisition, the Spin-Off, any Asset Sales or Asset Acquisitions, investments and discontinued operations (as determined in accordance with GAAP) and designations of any Restricted Subsidiary to be an Unrestricted Subsidiary or any Unrestricted Subsidiary to be a Restricted Subsidiary occurring during the Four-Quarter Period or any time subsequent to the last day of the Four-Quarter Period and on or prior to the Transaction Date, as if the Burger King Acquisition, the Spin-Off, such Asset Sale (including any associated repayment of Debt) or Asset Acquisition (including the incurrence or assumption of any associated Acquired Debt), investment, disposed operation or designation occurred on the first day of the Four-Quarter Period. For purposes of this definition, pro forma calculations shall be made in accordance with Article 11 of Regulation S-X promulgated under the Securities Act.

The Consolidated Lease Adjusted Secured Leverage Ratio shall be calculated on a pro forma basis as if any such Debt being Incurred (including any other Debt being Incurred contemporaneously), and any other Debt Incurred since the beginning of the Four-Quarter Period, had been Incurred and the proceeds thereof had been applied at the beginning of the Four-Quarter Period, and any other Debt repaid since the beginning of the Four-Quarter Period had been repaid at the beginning of the Four-Quarter Period; *provided* that for purposes of calculating the Consolidated Lease Adjusted Secured Leverage Ratio, the aggregate outstanding amount under the Revolving Credit Agreement shall be based on the average daily outstanding principal balance under such facility during the applicable Four-Quarter Period; *provided, further*, that to the extent that and so long as outstanding amounts under the Revolving Credit Facility are cash collateralized pursuant to the terms thereof, such amounts shall be treated as not outstanding and shall be excluded from the calculation of Secured Debt and Consolidated EBITDAR for purposes of calculating the Consolidated Lease Adjusted Secured Leverage Ratio. Furthermore, interest on Debt determined on a fluctuating basis, to the extent such interest is covered by agreements relating to Hedging Obligations, shall be deemed to accrue at the rate per annum resulting after giving effect to the operation of these agreements.

“*Consolidated Net Income*” means, with respect to any Person, for any period, the consolidated net income (or loss) of such Person and the Restricted Subsidiaries for such period as determined in accordance with GAAP, adjusted, to the extent included in calculating such net income, by excluding, without duplication:

- (a) all extraordinary gains or losses (net of fees and expenses relating to the transaction giving rise thereto), income, expenses or charges;
- (b) the portion of net income of such Person and the Restricted Subsidiaries allocable to minority interest in unconsolidated Persons or Investments in Unrestricted Subsidiaries to the extent that cash dividends or distributions have not or could not have been actually been received by such Person or one of the Restricted Subsidiaries;
- (c) gains or losses in respect of any Asset Sales after the Issue Date by such Person or one of the Restricted Subsidiaries (net of fees and expenses relating to the transaction giving rise thereto), on an after-tax basis;
- (d) solely for purposes of determining the amount available for Restricted Payments under clause (c) of the first paragraph of Section 4.7, the net income of any Restricted Subsidiary (other than a Guarantor) or such Person to the extent that the declaration of dividends or similar distributions by that Restricted Subsidiary of that income is not at the time permitted, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulations applicable to that Restricted Subsidiary or its stockholders;
- (e) any fees and expenses, including deferred finance costs, paid in connection with the issuance of the Notes, documentation and establishment of the Revolving Credit Agreement and consummation of the Transactions and the Spin-Off;
- (f) non-cash compensation expense incurred with any issuance of equity interests to an employee of such Person or any Restricted Subsidiary; and
- (g) any gain or loss realized as a result of the cumulative effect of a change in accounting principles.

“*Consolidated Net Tangible Assets*” means, with respect to any Person, the aggregate amount of assets of such Person and its Restricted Subsidiaries (less applicable reserves and other properly deductible items) after deducting therefrom (a) all current liabilities (excluding any indebtedness for money borrowed having a maturity of less than 12 months from the date of the most recent consolidated balance sheet of such Person but which by its terms is renewable or extendable beyond 12 months from such date at the option of the borrower) and (b) all goodwill, trade names, patents, unamortized debt discount and expense and any other like intangibles, all as set forth on the most recent consolidated balance sheet of such Person and computed in accordance with GAAP.

“*Consolidated Non-cash Charges*” means, with respect to any Person for any period, the aggregate non-cash charges and expenses of such Person and the Restricted Subsidiaries reducing Consolidated Net Income of such Person and the Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP (excluding depreciation and amortization and excluding any such charges constituting an extraordinary item or loss or any charge which requires an accrual of or a reserve for cash charges for any future period and including any non-cash charges relating to abandonment of assets or reserves related thereto).

In addition to and without limitation of the foregoing, for purposes of this definition, “Secured Debt” and “Consolidated EBITDAR” shall be calculated on a pro forma basis as if any such Secured Debt being Incurred (including any other Debt being Incurred contemporaneously), and any other Secured Debt Incurred since the beginning

of the Four-Quarter Period, had been Incurred and the proceeds thereof had been applied at the beginning of the Four-Quarter Period, and any other Debt repaid since the beginning of the Four-Quarter Period had been repaid at the beginning of the Four-Quarter Period.

If such Person or any of its Restricted Subsidiaries directly or indirectly Guarantees Debt of a third Person, the above clause shall give effect to the incurrence of such Guaranteed Debt as if such Person or such Subsidiary had directly incurred or otherwise assumed such Guaranteed Debt.

“*Corporate Trust Office*” means the designated office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at The Bank of New York Mellon Trust Company, N.A., 525 William Penn Place, 38th Floor, Pittsburgh, Pennsylvania 15259, Attention: Corporate Unit, or such other address as the Trustee may designate from time to time by written notice to the Holders and the Issuer, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Issuer).

“*Credit Facility*” means one or more debt facilities, including the Revolving Credit Agreement or other financing arrangements (including without limitation commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other indebtedness, including any notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith, and in each case as, as amended, extended, renewed, restated, supplemented, replaced (whether or not upon termination and whether with the original lenders, institutional investors or otherwise), refinanced (including through the issuance of debt securities), restructured or otherwise modified (in whole or in part, and without limitation as to amount, terms, conditions, covenants and other provisions) from time to time, and any agreement (and related document) governing Debt incurred to refinance, in whole or in part, the borrowings and commitments then outstanding or permitted to be outstanding under such Credit Facility or a successor Credit Facility, whether by the same or any other agent, lender or group of lenders (or institutional investors).

“*Debt*” means at any time (without duplication), with respect to any Person, whether recourse is to all or a portion of the assets of such Person, or non-recourse, the following, if and to the extent the following items (other than clauses (iii), (vi), (vii) and (viii) below) would appear as liabilities on a balance sheet of such Person prepared in accordance with GAAP: (i) all indebtedness of such Person for money borrowed or for the deferred purchase price of property which is due and payable in accordance with the agreement governing such purchase and which is not paid on the date due and payable (excluding any trade payables, trade accounts payable or other current liabilities incurred in the ordinary course of business, accrued expenses and any obligations to pay a contingent purchase price as long as such obligation remains contingent); (ii) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments; (iii) all obligations of such Person for the reimbursement of any obligor on any letters of credit (other than letters of credit that are secured by cash or Eligible Cash Equivalents), bankers’ acceptances or similar facilities (other than obligations with respect to letters of credit, banker’s acceptances or similar facilities securing obligations (other than obligations described under (i) and (ii) above) entered into in the ordinary course of business of such Person to the extent such letters of credit and banker’s acceptances or similar facilities are not drawn upon, or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following payment on the letter of credit, banker’s acceptance or similar facility; (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property or assets acquired by such Person which is due and payable in accordance with the agreement governing such purchase and which is not paid on the date due and payable (excluding trade accounts payable arising in the ordinary course of business, deemed expenses and excluding any obligations to pay a contingent purchase price as long as such obligation remains contingent, subject to the penultimate paragraph of this definition); (v) all Capital Lease Obligations of such Person (but excluding obligations under operating leases); (vi) the maximum fixed redemption or repurchase price of Redeemable Capital Interests in such Person at the time of determination (but excluding any accrued dividends); (vii) net Obligations under any Hedging Obligations of such Person at the time of determination; and (viii) all obligations of the types referred to in clauses (i) through (vii) of this definition of another Person and all dividends and other distributions of another Person, the payment of which, in either case, (A) such Person has Guaranteed or (B) is secured by any Lien upon the property or other assets of such Person, even though such Person has not assumed or become liable for the payment of such Debt, dividends or other distributions. For purposes of the foregoing: (a) the maximum fixed repurchase price of any Redeemable Capital Interests that do not have a fixed repurchase price shall

be calculated in accordance with the terms of such Redeemable Capital Interests as if such Redeemable Capital Interests were repurchased on any date on which Debt shall be required to be determined pursuant to this Indenture; *provided, however*, that, if such Redeemable Capital Interests are not then permitted to be repurchased, the repurchase price shall be the book value of such Redeemable Capital Interests; (b) the amount outstanding at any time of any Debt issued with original issue discount is the principal amount of such Debt less the remaining unamortized portion of the original issue discount of such Debt at such time as determined in conformity with GAAP, but such Debt shall be deemed Incurred only as of the date of original issuance thereof; (c) the amount of any Debt described in clause (viii)(A) above shall be the maximum liability under any such Guarantee; (d) the amount of any Debt described in clause (viii)(B) above shall be the lesser of (I) the maximum amount of the obligations so secured and (II) the Fair Market Value of such property or other assets; and (e) interest, fees, premium, and expenses and additional payments, if any, will not constitute Debt.

Notwithstanding the foregoing, in connection with the purchase by the Issuer or any Restricted Subsidiary of any business (including, without limitation, the Burger King Acquisition), the term “Debt” will exclude (x) customary indemnification obligations and (y) post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment is otherwise contingent; *provided, however*, that such amount would not be required to be reflected as a liability on the face of a balance sheet prepared in accordance with GAAP.

The amount of Debt of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above; *provided, however*, that in the case of Debt sold at a discount, the amount of such Debt at any time will be the accreted value thereof at such time.

“*Default*” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

“*Depository*” means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.3 hereof as the Depository with respect to the Notes, until a successor shall have been appointed and become such pursuant to Section 2.6 hereof, and, thereafter, “*Depository*” shall mean or include such successor.

“*Designation*” has the meaning set forth in Section 4.18.

“*Designation Amount*” has the meaning set forth in Section 4.18.

“*Discharge of First Lien Obligations*” means, subject to any reinstatement of First Lien Obligations in accordance with the Intercreditor Agreement, (a) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding at the rate provided for in the respective First Lien Document, whether or not such interest would be allowed in any such Insolvency or Liquidation Proceeding) and premiums, if any, of all First Lien Obligations under the First Lien Documents and termination of all commitments of the holders of the First Lien Obligations to lend or otherwise extend credit under the First Lien Documents, (b) payment in full in cash of all other First Lien Obligations (including letter of credit reimbursement obligations) due or otherwise owing at or prior to the time such principal, interest, and premiums are paid, (c) termination or cash collateralization (in an amount and manner, and on terms, reasonably satisfactory to the First Lien Agent) of all letters of credit issued or arranged under the First Lien Credit Documents and (d) termination, repayment or cash collateralization of all Bank Products in an amount, and on terms, reasonably satisfactory to the First Lien Agent (other than with respect to any Bank Products that, at such time, are allowed by the applicable Bank Lender or its Affiliates to remain outstanding without being required to be repaid or cash collateralized.)

“*DTC*” means The Depository Trust Company (55 Water Street, New York, New York).

“*Eligible Bank*” means a bank or trust company that (i) is organized and existing under the laws of the United States of America, or any state, territory or possession thereof, (ii) as of the time of the making or acquisition of an Investment in such bank or trust company, has combined capital and surplus in excess of \$500.0 million and (iii) the senior Debt of such bank or trust company is rated at least “A-2” by Moody’s or at least “A” by Standard & Poor’s.

*“Eligible Cash Equivalents”* means any of the following Investments: (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) maturing not more than one year after the date of acquisition; (ii) time deposits in and certificates of deposit of any Eligible Bank; *provided* that such Investments have a maturity date not more than two years after date of acquisition and that the Average Life of all such Investments is one year or less from the respective dates of acquisition; (iii) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (i) above entered into with any Eligible Bank; (iv) direct obligations issued by any state of the United States or any political subdivision or public instrumentality thereof; *provided* that such Investments mature, or are subject to tender at the option of the holder thereof within 365 days after the date of acquisition and, at the time of acquisition, have a rating of at least A from Standard & Poor’s or A-2 from Moody’s (or an equivalent rating by any other nationally recognized rating agency); (v) commercial paper of any Person other than an Affiliate of the Issuer; *provided* that such Investments have one of the two highest ratings obtainable from either Standard & Poor’s or Moody’s at the time of their acquisition and mature within 180 days after the date of acquisition; (vi) overnight and demand deposits in and bankers’ acceptances of any Eligible Bank and demand deposits in any bank or trust company to the extent insured by the Federal Deposit Insurance Corporation against the Bank Insurance Fund; (vii) money market funds substantially all of the assets of which comprise Investments of the types described in clauses (i) through (vi) above; and (viii) instruments equivalent to those referred to in clauses (i) through (vi) above or funds equivalent to those referred to in clause (vii) above denominated in Euros or any other foreign currency comparable in credit quality and tender to those referred to in such clauses and customarily used by corporations for cash management purposes in jurisdictions outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction, all as determined in good faith by the Issuer.

*“Equity Offering”* means (i) an underwritten public equity offering of Qualified Capital Interests pursuant to an effective registration statement under the Securities Act of the Issuer, or any direct or indirect parent company of the Issuer but only to the extent contributed to the Issuer or any successor to the Issuer in the form of Qualified Capital Interests, other than any public offerings registered on Form S-8, or (ii) a private equity offering of Qualified Capital Interests of the Issuer, or any direct or indirect parent company of the Issuer but only to the extent contributed to the Issuer or any successor to the Issuer in the form of Qualified Capital Interests.

*“Event of Loss”* means, with respect to any property or asset (tangible or intangible, real or personal) constituting Collateral, any of the following:

- (i) any loss, destruction or damage of such property or asset;
- (ii) any institution of any proceeding for the condemnation or seizure of such property or asset or for the exercise of any right of eminent domain;
- (iii) any actual condemnation, seizure or taking by exercise of the power of eminent domain or otherwise of such property or asset, or confiscation of such property or asset or the requisition of the use of such property or asset;
- (iv) any settlement in lieu of clauses (ii) or (iii) above; or
- (v) any loss as a result of a title event or claim against the title insurance company insuring such property.

*“Excess First Lien Obligations”* means the sum of (a) the portion of the principal amount of the loans outstanding under the First Lien Documents and the undrawn amount of outstanding letters of credit that is in excess of the Maximum First Lien Principal Debt, plus (b) the portion of interest and fees that accrues or is charged with respect to that portion of the principal amount of the loans and letters of credit described in clause (a) of this definition.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Exchange Offer*” shall have the meaning as defined in the Registration Rights Agreement.

“*Excluded Collateral*” shall have the meaning as defined in the Security Agreement.

“*Expiration Date*” has the meaning set forth in the definition of “Offer to Purchase.”

“*Fair Market Value*” means, with respect to the consideration received or paid in any transaction or series of transactions, the fair market value thereof, as determined in good faith by the Issuer, or, in the event of an exchange of assets with a Fair Market Value in excess of \$2.5 million, determined in good faith by the Board of Directors of the Issuer.

“*Fiesta Restaurant Group, Inc.*” means Fiesta Restaurant Group, Inc., a Delaware corporation.

“*First Lien Agent*” means the collateral agent under the Revolving Credit Agreement.

“*First Lien Credit Documents*” means the Revolving Credit Agreement, each other Credit Facility (to the extent that such Credit Facility provides for or evidences First Lien Obligations), the other Loan Documents (as defined in the Revolving Credit Agreement or any such other Credit Facility), and each of the other agreements, documents and instruments providing for or evidencing any other First Lien Obligation and any other document or instrument executed or delivered at any time in connection with any First Lien Obligation (including any intercreditor or joinder agreement among holders of First Lien Obligations but excluding documents governing secured hedging and cash management obligations), to the extent such are effective at the relevant time, as each may be amended, modified, restated, supplemented, replaced or refinanced from time to time.

“*First Lien DIP Amount*” means, after the commencement of an Insolvency or Liquidation Proceeding by any Grantor, \$10,000,000.

“*First Lien Documents*” means the First Lien Credit Documents and any and all other documents governing the First Lien Obligations (including documents related to Bank Products).

“*First Lien Obligations*” means (i) all Obligations, and all letters of credit and bankers’ acceptances issued or arranged (with letters of credit and bankers’ acceptances being deemed to have a principal amount equal to the maximum potential liability of the Issuer and its Restricted Subsidiaries thereunder), under the Revolving Credit Agreement or under any other document relating to the Revolving Credit Agreement, (ii) all Obligations under (and as defined in) any other Credit Facility and under any other document relating to such Credit Facility (to the extent that the Obligations under such Credit Facility are designated by the Issuer as “First Lien Obligations” for purposes of this Indenture), (iii) all Bank Products and (iv) including, after an Insolvency or Liquidation Proceeding, Obligations with respect to the First Lien DIP Amount; *provided* that Excess First Lien Obligations shall not constitute First Lien Obligations for purposes of this Indenture or First Lien Priority Indebtedness for purposes of the Intercreditor Agreement. “First Lien Obligations” shall in any event include: (a) all interest accrued or accruing, or which would accrue, absent commencement of an Insolvency or Liquidation Proceeding (and the effect of provisions such as Section 502(b)(2) of the Bankruptcy Code), on or after the commencement of an Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant First Lien Document, whether or not the claim for such interest is allowed or allowable as a claim in such Insolvency or Liquidation Proceeding, (b) any and all fees and expenses (including attorneys’ or financial consultants’ fees and expenses) incurred by the First Lien Agent and the holders of the First Lien Obligations on or after the commencement of an Insolvency or Liquidation Proceeding, whether or not the claim for fees and expenses is allowed or allowable under Section 502 or 506(b) of the Bankruptcy Code or any other provision of the Bankruptcy Code or any similar federal, state or foreign law for the relief of debtors as a claim in such Insolvency or Liquidation Proceeding, and (c) all obligations and liabilities of the Issuer and each Guarantor under each First Lien Document to which it is a party which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due and payable.

“*Foreign Subsidiary*” means any Subsidiary of the Issuer organized under the laws of any jurisdiction other than the United States of America or any State thereof or the District of Columbia.

“*Four-Quarter Period*” has the meaning set forth in the definition of “Consolidated Fixed Charge Coverage Ratio.”

“*Franchise Agreements*” means all of the franchise agreements to which the Issuer or any of its Restricted Subsidiaries is a party as a franchisee, whether entered into on, prior to or following the Issue Date, as the same may be from time to time amended, modified, supplemented or restated.

“*GAAP*” means generally accepted accounting principles in the United States, consistently applied, as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect as of the Issue Date.

“*Global Note Legend*” means the legend identified as such in Exhibit A hereto.

“*Global Notes*” means the Notes in global form that are in the form of Exhibit A hereto.

“*Guarantee*” means, as applied to any Debt of another Person, (i) a guarantee (other than by endorsement of negotiable instruments for collection in the normal course of business), direct or indirect, in any manner, of any part or all of such Debt, (ii) any direct or indirect obligation, contingent or otherwise, of a Person guaranteeing or having the effect of guaranteeing the Debt of any other Person in any manner and (iii) an agreement of a Person, direct or indirect, contingent or otherwise, the practical effect of which is to assure in any way the payment or performance (or payment of damages in the event of non-performance) of all or any part of such Debt of another Person (and “Guaranteed” and “Guaranteeing” shall have meanings that correspond to the foregoing).

“*Guarantor*” means any Person that executes a Note Guarantee in accordance with the provisions of this Indenture and their respective successors and assigns.

“*Hedging Obligation*” means, with respect to any Person, the obligations of such Person pursuant to (1) any interest rate swap agreement, interest rate collar agreement or other similar agreement or arrangement, (2) agreements or arrangements to manage fluctuations in currency exchange rates or (3) any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement.

“*Holder*” means a Person in whose name a Note is registered in the security register.

“*Incur*” means, with respect to any Debt or other obligation of any Person, to create, issue, incur (by conversion, exchange or otherwise), assume, Guarantee or otherwise become liable in respect of such Debt or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Debt or other obligation on the balance sheet of such Person. Debt otherwise Incurred by a Person before it becomes a Subsidiary of the Issuer shall be deemed to be Incurred at the time at which such Person becomes a Subsidiary of the Issuer. “*Incurrence*,” “*Incurred*,” “*Incurable*” and “*Incurring*” shall have meanings that correspond to the foregoing. A Guarantee by any of the Issuer or Restricted Subsidiaries of Debt Incurred by the Issuer or any Restricted Subsidiary, as applicable, shall not be a separate Incurrence of Debt. In addition, the following shall not be deemed a separate Incurrence of Debt:

(i) accrual of interest, amortization or accretion of debt discount or accretion of principal;

(ii) the payment of regularly scheduled interest in the form of additional Debt of the same instrument or the payment of regularly scheduled dividends on Capital Interests in the form of additional Capital Interests of the same class and with the same terms or the accretion or accumulation of dividends on any Capital Interests;

(iii) the obligation to pay a premium in respect of Debt arising in connection with the issuance of a notice of redemption or making of a mandatory offer to purchase such Debt; and

(iv) unrealized losses or charges in respect of Hedging Obligations.

“*Indenture*” means this Indenture, as amended or supplemented from time to time.

“*Initial Notes*” has the meaning set forth in the preamble hereto.

“*Initial Purchasers*” means Wells Fargo Securities, LLC, Jefferies & Company, Inc., Rabo Securities USA, Inc. and Raymond James & Associates, Inc.

“*Insolvency or Liquidation Proceeding*” means (a) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to the Issuer or any of the Guarantors, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to the Issuer or any of the Guarantors or with respect to a material portion of its respective assets, (c) any liquidation, dissolution (other than as permitted by the Revolving Credit Agreement and related documents and this Indenture and Security Documents), reorganization or winding up of the Issuer or any of the Guarantors, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of the Issuer or any of the Guarantors.

“*Intercreditor Agreement*” means the intercreditor agreement dated as of the Issue Date among the First Lien Agent and the Collateral Agent, as it may be amended from time to time in accordance with this Indenture.

“*Investment*” by any Person means any direct or indirect loan, advance (or other extension of credit) or capital contribution to (by means of any transfer of cash or other property or assets to another Person or any other payments for property or services for the account or use of another Person) another Person, including, without limitation, the following: (i) the purchase or acquisition of any Capital Interest or other evidence of beneficial ownership in another Person; and (ii) the purchase, acquisition or Guarantee of the obligations of another Person or the issuance of a “keep-well” with respect thereto; but shall exclude: (a) accounts receivable and other extensions of trade credit on commercially reasonable terms in accordance with normal trade practices; (b) the acquisition of property, assets and services from suppliers and other vendors in the normal course of business; and (c) prepaid expenses and workers’ compensation, utility, lease and similar deposits, in the normal course of business. Except as otherwise specified in this definition, the amount of any Investment (other than an Investment made in cash) shall be the Fair Market Value thereof on the date such Investment is made. The amount of Investment pursuant to a Designation under Section 4.18 shall be the Designation Amount determined in accordance with such covenant. If the Issuer or any of its Subsidiaries sells or otherwise disposes of any Capital Interests of any direct or indirect Subsidiary such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary, the Issuer shall be deemed to have made an Investment on the date of any such sale or other disposition equal to the Fair Market Value of the Capital Interests of any all other Investments in such Subsidiary not sold or disposed of, which amount shall be determined in good faith by the Board of Directors of the Issuer. For the avoidance of doubt, any payments (i) pursuant to any Guarantee previously incurred in compliance with this Indenture or (ii) pursuant to the Transition Services Agreement, in each case shall not be deemed to be Investments by any of the Issuer or Restricted Subsidiaries.

“*Issue Date*” means May 30, 2012.

“*Issuer*” has the meaning set forth in the preamble hereto until a successor replaces it in accordance with the applicable provisions of this Indenture and, thereafter, means the successor.

“*Issuer Order*” means any written instruction by the Issuer and executed by an Officer of the Issuer.

“*Legal Holiday*” means a Saturday, a Sunday or a day on which banking institutions in The City of New York, the city in which the Corporate Trust Office of the Trustee is located or at a place of payment are authorized or required by law, regulation or executive order to remain closed. If a payment date in a place of payment is a Legal Holiday, payment shall be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

“*Lien*” means, with respect to any property or other asset, any mortgage, deed of trust, deed to secure debt, pledge, hypothecation, assignment, deposit arrangement, security interest, lien (statutory or otherwise), charge, easement, encumbrance or other security agreement on or with respect to such property or other asset (including, without limitation, any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

“*Maximum First Lien Principal Debt*” means Debt, including letters of credit, under the First Lien Credit Documents (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Issuer and its Restricted Subsidiaries thereunder) in an aggregate principal amount not to exceed the amount of Debt permitted under clause (i) of the definition of “Permitted Debt” (as set forth in this Indenture as in effect on the Issue Date) plus, after and Insolvency or Liquidation Proceeding, the First Lien DIP Amount. For the avoidance of doubt, for the purposes of this definition only, Bank Products shall not be considered Debt under the First Lien Credit Documents.

“*Moody’s*” means Moody’s Investors Service, Inc., or any successor thereto.

“*Net Cash Proceeds*” means, with respect to Asset Sales of any Person, cash and Eligible Cash Equivalents received, net of: (i) all reasonable out-of-pocket costs and expenses of such Person incurred in connection with such a sale, including, without limitation, all legal, accounting, title and recording tax expenses, commissions and other fees and expenses incurred and all federal, state, foreign and local taxes arising in connection with such an Asset Sale that are paid or required to be accrued as a liability under GAAP by such Person; (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations associated with such Asset Sale; (iii) all payments made by such Person on any Debt that is secured by such properties or other assets in accordance with the terms of any Lien upon or with respect to such properties or other assets or that must, by the terms of such Lien or such Debt, or in order to obtain a necessary consent to such transaction or by applicable law, be repaid to any other Person (other than the Issuer or Restricted Subsidiaries) in connection with such Asset Sale (other than in the case of Collateral, any Lien which does not rank prior to the Liens in the Collateral granted to the Collateral Agent pursuant to this Indenture and the Security Documents); and (iv) all contractually required distributions and other payments made to minority interest holders in Restricted Subsidiaries of such Person as a result of such transaction; *provided, however*, that: (a) in the event that any consideration for an Asset Sale (which would otherwise constitute Net Cash Proceeds) is required by (I) contract to be held in escrow pending determination of whether a purchase price adjustment will be made or (II) GAAP to be reserved against other liabilities in connection with such Asset Sale, such consideration (or any portion thereof) shall become Net Cash Proceeds only at such time as it is released to such Person from escrow or otherwise; and (b) any non-cash consideration received in connection with any transaction, which is subsequently converted to cash, shall become Net Cash Proceeds only at such time as it is so converted.

“*Net Rent*” means, for the Issuer and the Restricted Subsidiaries for any period, the aggregate rent expense (excluding common area maintenance charges and taxes) for the Issuer and the Restricted Subsidiaries for such period other than (1) rent expense under vehicle, machinery, airplane and other equipment leases, (2) Capitalized Lease Obligations and (3) synthetic lease obligations, minus rental income received from franchisees and third parties during such period including without limitation, pursuant to (i) leases of owned Real Property to franchisees and/or third parties, (ii) subleases to such franchisees or third parties, as the case may be, and (iii) leases that have been assigned to such franchisees or third parties, as the case may be, in which the Issuer and the Restricted Subsidiaries, as applicable, remains liable for the payment of rent under such lease to the extent that rent payments are actually made, all as determined on a consolidated basis in accordance with GAAP.

“*Non-Recourse Debt*” means Debt:

- (1) as to which neither the Issuer nor any Restricted Subsidiary (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Debt), (b) is directly or indirectly liable as a guarantor or otherwise, or (c) constitutes the lender; and

(2) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both, any holder of any other Debt (other than the Notes) of the Issuer or any Restricted Subsidiary to declare a default on such other Debt or cause the payment thereof to be accelerated or payable prior to its stated maturity.

“*Note Custodian*” means the Trustee when serving as custodian for the Depositary with respect to the Global Notes, or any successor entity thereto.

“*Note Guarantee*” means any guarantee of the Notes by any Guarantor pursuant to this Indenture.

“*Notes*” has the meaning set forth in the preamble to this Indenture.

“*Obligations*” means any principal, premium, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, expenses, costs, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker’s acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, expenses, costs, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Debt.

“*Offer*” has the meaning set forth in the definition of “Offer to Purchase.”

“*Offer to Purchase*” means a written offer (the “*Offer*”) sent by the Issuer by first class mail, postage prepaid, to each Holder at his address appearing in the security register on the date of the Offer, offering to purchase up to the aggregate principal amount of Notes set forth in such Offer at the purchase price set forth in such Offer (as determined pursuant to this Indenture). Unless otherwise required by applicable law, the Offer shall specify an expiration date (the “*Expiration Date*”) of the Offer to Purchase which shall be, subject to any contrary requirements of applicable law, not less than 30 days or more than 60 days after the date of mailing of such Offer and a settlement date (the “*Purchase Date*”) for purchase of Notes within five business days after the Expiration Date. The Issuer shall notify the Trustee at least 15 days (or such shorter period as is acceptable to the Trustee) prior to the mailing of the Offer of the Issuer’s obligation to make an Offer to Purchase, and the Offer shall be mailed by the Issuer or, at the Issuer’s request and provision of such Offer information, by the Trustee in the name and at the expense of the Issuer. The Offer shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Purchase. The Offer shall also state:

- (i) the section of this Indenture pursuant to which the Offer to Purchase is being made;
- (ii) the Expiration Date and the Purchase Date;
- (iii) the aggregate principal amount of the outstanding Notes offered to be purchased pursuant to the Offer to Purchase (including, if less than 100%, the manner by which such amount has been determined pursuant to Section 4.10) (the “*Purchase Amount*”);
- (iv) the purchase price to be paid by the Issuer for each \$1,000 principal amount of Notes accepted for payment (as specified pursuant to this Indenture) (the “*Purchase Price*”);
- (v) that the Holder may tender all or any portion of the Notes registered in the name of such Holder and that any portion of a Note tendered must be tendered in a minimum amount of \$2,000 principal amount;
- (vi) the place or places where Notes are to be surrendered for tender pursuant to the Offer to Purchase, if applicable;

(vii) that, unless the Issuer defaults in making such purchase, any Note accepted for purchase pursuant to the Offer to Purchase will cease to accrue interest on and after the Purchase Date, but that any Note not tendered or tendered but not purchased by the Issuer pursuant to the Offer to Purchase will continue to accrue interest at the same rate;

(viii) that, on the Purchase Date, the Purchase Price will become due and payable upon each Note accepted for payment pursuant to the Offer to Purchase;

(ix) that each Holder electing to tender a Note pursuant to the Offer to Purchase will be required to surrender such Note or cause such Note to be surrendered at the place or places set forth in the Offer prior to the close of business on the Expiration Date (such Note being, if the Issuer or the Trustee so require, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing);

(x) that Holders will be entitled to withdraw all or any portion of Notes tendered if the Issuer (or its paying agent) receives, not later than the close of business on the Expiration Date, a facsimile transmission or letter setting forth the name of the Holder, the aggregate principal amount of the Notes the Holder tendered, the certificate number of the Note the Holder tendered and a statement that such Holder is withdrawing all or a portion of his tender;

(xi) that (a) if Notes having an aggregate principal amount less than or equal to the Purchase Amount are duly tendered and not withdrawn pursuant to the Offer to Purchase, the Issuer shall purchase all such Notes and (b) if Notes having an aggregate principal amount in excess of the Purchase Amount are tendered and not withdrawn pursuant to the Offer to Purchase, the Issuer shall purchase Notes having an aggregate principal amount equal to the Purchase Amount on a pro rata basis (including with respect to Permitted Additional Pari Passu Obligations required to be purchased in connection therewith, and with such adjustments as may be deemed appropriate so that only Notes in denominations of \$2,000 principal amount or integral multiples of \$1,000 in excess thereof shall remain outstanding following such purchase); and

(xii) if applicable, that, in the case of any Holder whose Note is purchased only in part, the Issuer shall execute, and, the Trustee shall authenticate and deliver to the Holder of such Note without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in the aggregate principal amount equal to and in exchange for the unpurchased portion of the aggregate principal amount of the Notes so tendered.

*“Offering Memorandum”* means the Offering Memorandum related to the issuance of the Initial Notes on the Issue Date, dated May 24, 2012.

*“Officer”* means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary, any Assistant Secretary or any Vice-President of such Person.

*“Officers’ Certificate”* means a certificate signed by two Officers of the Issuer or a Guarantor, as applicable, one of whom must be the principal executive officer, the principal financial officer or the principal accounting officer of the Issuer or such Guarantor, as applicable.

*“Opinion of Counsel”* means an opinion, reasonably acceptable to the Trustee, from legal counsel. The counsel may be an employee of or counsel to the Issuer or any Subsidiary of the Issuer.

*“Participant”* means, with respect to DTC, a Person who has an account with DTC.

*“Paying Agent”* means any Person authorized by the Issuer to pay the principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance, covenant defeasance or similar payment with respect to, any Notes on behalf of the Issuer.

*“Permitted Additional Pari Passu Obligations”* means obligations under any Additional Notes or other Debt secured by liens *pari passu* with the Notes on the Collateral in compliance with clause (b)(ii) under the definition of “Permitted Liens”; *provided* that (i) the representative of such Permitted Additional Pari Passu Obligations executes a joinder agreement to the Security Agreement and the Intercreditor Agreement, in each case in the form attached thereto agreeing to be bound thereby and (ii) the Issuer has designated such Debt as “Permitted Additional Pari Passu Obligations” under the Security Agreement and the Intercreditor Agreement, if applicable.

*“Permitted Business”* means any business similar in nature to any business conducted by the Issuer and the Restricted Subsidiaries on the Issue Date and any business reasonably ancillary, incidental, complementary or related to the business conducted by the Issuer and the Restricted Subsidiaries on the Issue Date or a reasonable extension, development or expansion thereof, in each case, as determined in good faith by the Board of Directors of the Issuer.

*“Permitted Collateral Liens”* means:

(i) Liens securing the Notes outstanding on the Issue Date, Refinancing Debt with respect to such Notes, the Guarantees relating thereto and any Obligations with respect to such Notes, Refinancing Debt and Guarantees;

(ii) Liens securing First Lien Obligations and Permitted Additional Pari Passu Obligations permitted to be incurred pursuant to this Indenture and Refinancing Debt with respect to such First Lien Obligations and Permitted Additional Pari Passu Obligations; *provided* that any such Liens on the Collateral granted by the Issuer or any Restricted Subsidiary pursuant to this clause (ii) are subject to the Intercreditor Agreement;

(iii) Liens existing on the Issue Date (other than Liens specified in clause (i) above) and any extension, renewal, refinancing or replacement thereof so long as such extension, renewal, refinancing or replacement does not extend to any other property or asset and does not increase the outstanding principal amount thereof (except by the amount of any premium or fee paid or payable or original issue discount in connection with such extension, renewal, replacement or refinancing plus fees and expenses); and

(iv) Liens described in clauses (ii), (iii), (iv), (v), (vi), (vii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xviii), (xix) and (xx) of the definition of “Permitted Liens.”

*“Permitted Debt”* has the meaning set forth in Section 4.9(b).

*“Permitted Holders”* means each of: (i) Jefferies Capital Partners IV L.P., Jefferies Employee Partners IV LLC and JCP Partners IV LLC and their Affiliates, (ii) each Carrols Officer; any spouse or lineal descendant of a Carrols Officer; any trust or estate the sole beneficiary of or beneficiaries of which is a Carrols Officer, any spouse or lineal descendants of a Carrols Officer; or any entity owned or controlled by any of the foregoing and (iii) any group (as defined in the rules promulgated under Section 13(d) of the Exchange Act) which is controlled by any of the persons referred to in the immediately preceding clauses (i) and (ii).

*“Permitted Investments”* means:

(i) Investments in existence on the Issue Date;

(ii) Investments required pursuant to any agreement or obligation of the Issuer or Restricted Subsidiaries, in effect on the Issue Date, to make such Investments;

(iii) Eligible Cash Equivalents;

(iv) Investments in property and other assets owned or used by the Issuer or Restricted Subsidiaries in the operation of a Permitted Business;

(v) Investments by the Issuer or Restricted Subsidiaries in the Issuer or Restricted Subsidiaries and guarantees by the Issuer or Restricted Subsidiaries of Debt of the Issuer or a Restricted Subsidiary of Debt otherwise permitted under Section 4.9 or of other obligations of the Issuer or a Restricted Subsidiary otherwise permitted hereunder;

(vi) Investments by the Issuer or Restricted Subsidiaries in a Person, if as a result of such Investment (a) such Person becomes a Restricted Subsidiary or (b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated or wound up into, the Issuer or a Restricted Subsidiary;

(vii) Hedging Obligations entered into to manage interest rates, commodity prices and currency exchange rates (and not for speculative purposes) and other Bank Products;

(viii) Investments received in settlement of obligations owed to the Issuer or Restricted Subsidiaries, as a result of bankruptcy or insolvency proceedings, upon the foreclosure or enforcement of any Lien in favor of the Issuer or Restricted Subsidiaries, or in settlement of litigation, arbitration or other disputes;

(ix) Investments by the Issuer or Restricted Subsidiaries not otherwise permitted under this definition, in an aggregate amount not to exceed \$10.0 million at any one time outstanding;

(x) (a) loans and advances (including for travel and relocation) to employees in an amount not to exceed \$2.5 million in the aggregate at any one time outstanding, (b) loans or advances against, and repurchases of, Capital Interests and options of the Issuer and the Restricted Subsidiaries held by management and employees in connection with any stock option, deferred compensation or similar benefit plans approved by the Board of Directors (or similar governing body) and otherwise issued in accordance with the terms of this Indenture and (c) loans or advances to management and employees to pay taxes in respect of Capital Interests issued under stock option, deferred compensation or similar benefit plans in an amount not to exceed \$2.5 million in the aggregate at any one time outstanding; and

(xi) any Investment in any Person to the extent such Investment represents the non-cash portion of the consideration received in connection with an Asset Sale consummated in compliance with Section 4.10 or any other disposition of Property not constituting an Asset Sale.

“Permitted Liens” means:

(i) Liens existing on the Issue Date;

(ii) Liens that secure Obligations:

(a) in respect of any First Lien Obligations not to exceed the amount permitted to be incurred pursuant to clause (i) of the definition of “Permitted Debt”; *provided* that in the event the Issuer obtains any revolving credit commitments under any Credit Facility, all Liens securing such commitments shall, for purposes of this clause (ii)(a), be deemed to be incurred pursuant to this clause (ii)(a) at the time of obtaining such commitments regardless of when any borrowings, repayments or reborrowings under such commitments are made; *provided, further*, that Liens on the Collateral under this clause (ii)(a) are subject to the provisions of the Intercreditor Agreement;

(b) in respect of any Permitted Additional Pari Passu Obligations in an amount such that at the time of incurrence and after giving *pro forma* effect thereto, the Consolidated Lease Adjusted Secured Leverage Ratio would be no greater than 5.50 to 1.00; *provided, further*, that Liens under this clause (ii)(b) are subject to the provisions of the Intercreditor Agreement; and

(c) incurred pursuant to clause (vii) or clause (viii) of the definition of “Permitted Debt”;

(iii) any Lien for taxes or assessments or other governmental charges or levies not yet delinquent more than 30 days (or which, if so due and payable, are being contested in good faith and for which adequate reserves are being maintained, to the extent required by GAAP);

(iv) any carrier's, warehousemen's, materialmen's, mechanic's, landlord's or other similar Liens arising by law for sums not then due and payable more than 30 days after giving effect to any applicable grace period (or which, if so due and payable, are being contested in good faith and with respect to which adequate reserves are being maintained, to the extent required by GAAP);

(v) minor survey exceptions, minor imperfections of title, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or Liens incidental, to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Debt and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(vi) pledges or deposits (a) in connection with workers' compensation, unemployment insurance and other types of social security, or to secure other types of statutory obligations or the requirements of any official body, or (b) to secure the performance of tenders, bids, surety or performance bonds, appeal bonds, leases, purchase, construction, sales or servicing contracts and other similar obligations Incurred in the normal course of business consistent with industry practice; or (c) to obtain or secure obligations with respect to letters of credit, banker's acceptances, Guarantees, bonds or other sureties or assurances given in connection with the activities described in clauses (a) and (b) above, in each case not Incurred or made in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of property or services or imposed by ERISA or the Code in connection with a "plan" (as defined in ERISA) or (d) arising in connection with any attachment unless such Liens are in excess of \$5.0 million in the aggregate and shall not be satisfied or discharged or stayed pending appeal within 60 days after the entry thereof or the expiration of any such stay;

(vii) Liens on property of a Person existing at the time such Person is merged with or into or consolidated with the Issuer or Restricted Subsidiaries or becomes a Restricted Subsidiary or on property acquired by the Issuer or Restricted Subsidiaries (and in each case not created or Incurred in anticipation of such transaction), including Liens securing Acquired Debt permitted under this Indenture; *provided* that such Liens are not extended to the property and assets of the Issuer or Restricted Subsidiaries other than the property or assets acquired

(viii) Liens securing Debt of a Guarantor owed to and held by the Issuer or Guarantors;

(ix) other Liens (not securing Debt) incidental to the conduct of the business of the Issuer or Restricted Subsidiaries, as the case may be, or the ownership of their assets which do not individually or in the aggregate materially adversely affect the value of such assets or materially impair the operation of the business of the Issuer or the Restricted Subsidiaries;

(x) Liens to secure any permitted extension, renewal, refinancing or refunding (or successive extensions, renewals, refinancings or refundings), in whole or in part, of any Debt secured by Liens referred to in the foregoing clauses (i) and (vii); *provided* that such Liens do not extend to any other property or assets and the principal amount of the obligations secured by such Liens is not greater than the sum of the outstanding principal amount of the refinanced Debt plus any fees and expenses, including premiums or original issue discount related to such extension, renewal, refinancing or refunding;

(xi) Liens in favor of customs or revenue authorities arising as a matter of law to secure payment of custom duties in connection with the importation of goods incurred in the ordinary course of business;

(xii) Liens to secure Capital Lease Obligations or Purchase Money Debt permitted to be Incurred pursuant to clause (viii) of the definition of “Permitted Debt” covering only the assets financed by or acquired with such Debt;

(xiii) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person’s obligation in respect of banker’s acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment, or storage of such inventory or other goods;

(xiv) Liens securing Debt Incurred to finance the construction, purchase or lease of, or repairs, improvements or additions to, property, plant or equipment of such Person; *provided, however*, that the Lien may not extend to other property owned by such Person or any of the Restricted Subsidiaries at the time the Lien is Incurred (other than assets and property affixed or appurtenant thereto and any proceeds thereof), and the Debt (other than any interest thereon) secured by the Lien may not be Incurred more than 180 days after the later of the acquisition, completion of construction, repair, improvement, addition or commencement of full operation of the property subject to the Lien;

(xv) Liens on property or shares of Capital Interests of another Person at the time such other Person becomes a Subsidiary of such Person; *provided, however*, that (a) the Liens may not extend to any other property owned by such Person or any of the Restricted Subsidiaries (other than assets and property affixed or appurtenant thereto and proceeds thereof) and (b) such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Restricted Subsidiary;

(xvi) Liens securing judgments for the payment of money not constituting an Event of Default under clause (7) under Section 6.1 of this Indenture so long as any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(xvii) Liens on the Collateral granted under the Security Documents in favor of the Collateral Agent to secure the Notes and the Guarantees and the other Permitted Additional Pari Passu Obligations;

(xviii) Liens securing Hedging Obligations that are otherwise permitted under this Indenture; *provided* that such Liens are subject to the provisions of the Intercreditor Agreement;

(xix) leases, subleases (including, without limitation, leases of Pollo Tropical restaurants by the Issuer and subleased to Pollo Operations, Inc.), licenses or sublicenses granted to others in the ordinary course of business or pursuant to a disposition otherwise permitted hereunder which do not materially interfere with the ordinary conduct of the business of the Issuer or any Restricted Subsidiaries and do not secure any Debt;

(xx) Liens securing Debt or other obligations, as measured by principal amount, which, when taken together with the principal amount of all other Debt secured by Liens (excluding Liens permitted by clauses (i) through (xix) above) at the time of determination, does not exceed \$10.0 million in the aggregate at any one time outstanding; and

(xxi) any extensions, substitutions, replacements or renewals of the foregoing.

“*Person*” means any individual, corporation, limited liability company, partnership, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

“*Preopening Costs*” means “start-up costs” (such term used herein as defined in SOP 98-5 published by the American Institute of Certified Public Accountants) related to the acquisition, opening and organizing of new restaurants, including, without limitation, the cost of feasibility studies, staff training and recruiting and travel costs for employees engaged in such start-up activities.

“*Property*” means, with respect to any Person, any interest of such Person in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including, without limitation, Capital Interests in any other Person.

“*Purchase Amount*” has the meaning set forth in the definition of “Offer to Purchase.”

“*Purchase Date*” has the meaning set forth in the definition of “Offer to Purchase.”

“*Purchase Money Debt*” means Debt (i) Incurred to finance the purchase, lease or construction (including additions, repairs and improvements thereto) of any assets (other than Capital Interests) of such Person or any Restricted Subsidiary; and (ii) that is secured by a Lien on such assets where the lender’s sole security is to the assets so purchased or constructed (and assets or property affixed or appurtenant thereto and any proceeds thereof); and in either case that does not exceed 100% of the cost and to the extent the purchase or construction prices for such assets are or should be included in “addition to property, plant or equipment” in accordance with GAAP.

“*Purchase Price*” has the meaning set forth in the definition of “Offer to Purchase.”

“*Qualified Capital Interests*” in any Person means a class of Capital Interests other than Redeemable Capital Interests.

“*Qualified Equity Offering*” means an underwritten primary public equity offering of Qualified Capital Interests of Issuer (or any direct or indirect parent company of the Issuer or any successor thereto but only to the extent contributed to the Issuer in the form of Qualified Capital Interests) pursuant to an effective registration statement under the Securities Act, other than a registered offering on Form S-8.

“*Real Property*” means, collectively, all right, title and interests (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all buildings, structures, parking areas and improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“*Redeemable Capital Interests*” in any Person means any equity security of such Person that by its terms (or by terms of any security into which it is convertible or for which it is exchangeable), or otherwise (including the passage of time or the happening of an event), is required to be redeemed, is redeemable at the option of the holder thereof in whole or in part (including by operation of a sinking fund), or is convertible or exchangeable for Debt of such Person at the option of the holder thereof, in whole or in part, at any time prior to the Stated Maturity of the Notes; *provided* that only the portion of such equity security which is required to be redeemed, is so convertible or exchangeable or is so redeemable at the option of the holder thereof before such date will be deemed to be Redeemable Capital Interests. Notwithstanding the preceding sentence, any equity security that would constitute Redeemable Capital Interests solely because the holders of the equity security have the right to require any of the Issuer or Restricted Subsidiaries to repurchase such equity security upon the occurrence of a Change of Control, Qualified Equity Offering or an Asset Sale will not constitute Redeemable Capital Interests if the terms of such equity security provide that the Issuer or Restricted Subsidiary may not repurchase or redeem any such equity security pursuant to such provisions unless such repurchase or redemption complies with Section 4.7. The amount of Redeemable Capital Interests deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that the Issuer and the Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Redeemable Capital Interests or portion thereof, exclusive of accrued dividends.

“*Redemption Price*” when used with respect to any Note to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

“*Refinancing Debt*” means Debt that refunds, refinances, defeases, renews, replaces or extends any Debt permitted to be Incurred by the Issuer or Restricted Subsidiaries pursuant to the terms of this Indenture (including the Notes), whether involving the same or any other lender or creditor or group of lenders or creditors, but only to the extent that:

- (i) the Refinancing Debt is subordinated to the Notes to at least the same extent as the Debt being refunded, refinanced, defeased, renewed, replaced or extended, if such Debt was subordinated to the Notes,
- (ii) the Refinancing Debt has a Stated Maturity either (a) no earlier than the Debt being refunded, refinanced or extended or (b) at least 91 days after the maturity date of the Notes,
- (iii) the Refinancing Debt has a weighted average life to maturity at the time such Refinancing Debt is Incurred that is equal to or greater than the weighted average life to maturity of the Debt being refunded, refinanced, defeased, renewed, replaced or extended,
- (iv) such Refinancing Debt is in an aggregate principal amount that is less than or equal to the sum of (a) the aggregate principal or accreted amount (in the case of any Debt issued with original issue discount, as such) then outstanding under the Debt being refunded, refinanced, defeased, renewed, replaced or extended, (b) the amount of accrued and unpaid interest, if any, and premiums owed, if any, not in excess of pre-existing optional prepayment provisions on such Debt being refunded, refinanced, defeased, renewed, replaced or extended and (c) the amount of reasonable and customary fees, expenses and costs related to the Incurrence of such Refinancing Debt, and
- (v) such Refinancing Debt shall not include (x) Debt of a Restricted Subsidiary that is not a Guarantor that refinances Debt of the Issuer or a Guarantor or (y) Debt of the Issuer or a Restricted Subsidiary that refinances Debt of an Unrestricted Subsidiary.

“*Registration Rights Agreement*” means that certain Registration Rights Agreement, dated the Issue Date, by and among the Issuer, the Guarantors and the Initial Purchasers.

“*Regulation S*” means Regulation S under the Securities Act.

“*Regulation S Global Note*” means a permanent Global Note in the form of Exhibit A hereto bearing the Global Note Legend and the Restricted Notes Legend and deposited with or on behalf of and registered in the name of the Depository or its nominee, issued in a denomination equal to the outstanding principal amount of the Regulation S Temporary Global Note upon expiration of the Restricted Period.

“*Responsible Officer*” means, when used with respect to the Trustee, any officer of the Trustee within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, senior associate, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“*Restricted Notes Legend*” means the legend identified as such in Exhibit A hereto.

“*Restricted Payment*” is defined to mean any of the following:

- (i) any dividend or other distribution declared and paid on the Capital Interests in the Issuer or on the Capital Interests in any Restricted Subsidiary that are held by, or declared and paid to, any Person other than the Issuer or a Restricted Subsidiary; *provided* that the following shall not be “Restricted Payments”:
  - (a) dividends, distributions or payments, in each case, made solely in Qualified Capital Interests in the Issuer; and

(b) dividends or distributions payable to the Issuer or a Restricted Subsidiary or to other holders of Capital Interests of a Restricted Subsidiary on a pro rata basis;

(ii) any payment made by the Issuer or any of the Restricted Subsidiaries to purchase, redeem, acquire or retire any Capital Interests in the Issuer or any of the Restricted Subsidiaries, including any issuance of Debt, in exchange for such Capital Interests or the conversion or exchange of such Capital Interests into or for Debt other than any such Capital Interests owned by the Issuer or any Restricted Subsidiary;

(iii) any payment made by the Issuer or any of the Restricted Subsidiaries (other than a payment made solely in Qualified Capital Interests in the Issuer) to redeem, repurchase, defease (including an in substance or legal defeasance) or otherwise acquire or retire for value (including pursuant to mandatory repurchase covenants), (a) prior to any scheduled maturity, scheduled sinking fund or mandatory redemption payment, Debt of the Issuer or any Guarantor that is subordinate (whether pursuant to its terms or by operation of law) in right of payment to the Notes or Note Guarantees (excluding any Debt owed to the Issuer or any Restricted Subsidiary); except (x) payments of principal in anticipation of satisfying a sinking fund obligation, scheduled maturity or mandatory redemption date, in each case, within one year of the due date thereof and (y) any payments in respect of Debt to the extent the issuance of such Debt was a Restricted Payment and (ii) any Debt which would have constituted a Restricted Payment under clause (b) above;

(iv) any Investment by the Issuer or a Restricted Subsidiary in any Person, other than a Permitted Investment; and

(v) any designation of a Restricted Subsidiary as an Unrestricted Subsidiary.

“*Restricted Period*” means the 40-day “distribution compliance period” as defined in Regulation S.

“*Restricted Subsidiary*” means any Subsidiary of the Issuer that has not been designated as an “Unrestricted Subsidiary” in accordance with this Indenture.

“*Revolving Credit Agreement*” means that certain revolving credit agreement, dated the Issue Date, by and among Wells Fargo Bank, National Association, as administrative agent, collateral agent, syndicating agent and a lender, the revolving credit lenders named therein, Carrols Restaurant Group, Inc., as the borrower, the domestic subsidiaries of the borrower from time to time party thereto as guarantors, Wells Fargo Securities, LLC, as sole lead arranger, together with all related notes, letters of credit, collateral documents, guarantees, and any other related agreements and instruments executed and delivered in connection therewith, in each case as amended, modified, supplemented, restated, refinanced, refunded or replaced in whole or in part from time to time including by or pursuant to any agreement or instrument that extends the maturity of any Debt thereunder, or increases the amount of available borrowings thereunder (*provided* that such increase in borrowings is permitted under clause (i) of the definition of the term “Permitted Debt”), or adds Subsidiaries of the Issuer as additional borrowers or guarantors thereunder, in each case with respect to such agreement or any successor or replacement agreement and whether by the same or any other agent, lender, group of lenders, purchasers or debt holders.

“*Secured Debt*” means any Debt of the Issuer or any of its Restricted Subsidiaries secured by a Lien.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Security Agreement*” means the security agreement to be dated as of the Issue Date between the Collateral Agent, the Issuer and the Guarantors, granting, among other things, a Lien on the Collateral subject to Permitted Collateral Liens and Permitted Liens, in each case in favor of the Collateral Agent for its benefit and for the benefit of the Trustee and the Holders of the Notes and the holders of any Permitted Additional Pari Passu Obligations as amended, modified, restated, supplemented or replaced from time to time in accordance with its terms.

“*Security Documents*” means the Security Agreement, the mortgages with respect to the Real Property, the Intercreditor Agreement and all of the security agreements, pledges, collateral assignments, mortgages, deeds of trust, trust deeds or other instruments evidencing or creating or purporting to create any security interests in favor of the Collateral Agent for its benefit and for the benefit of the Trustee and the Holders of the Notes and the holders of any other Permitted Additional Pari Passu Obligations, in all or any portion of the Collateral, as amended, modified, restated, supplemented or replaced from time to time.

“*Significant Subsidiary*” has the meaning set forth in Rule 1-02 of Regulation S-X under the Securities Act and Exchange Act, but shall not include any Unrestricted Subsidiary.

“*Spin-Off*” means the spin-off of the Capital Interests of Fiesta Restaurant Group, Inc. the former wholly-owned subsidiary of the Issuer, to the shareholders of the Issuer on May 7, 2012 as generally described in Fiesta Restaurant Group, Inc.’s Registration Statement on Form 10, as amended, File No. 001-35373, filed with the Commission.

“*Standard & Poor’s*” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

“*Stated Maturity*,” when used with respect to (i) any Note or any installment of interest thereon, means the date specified in such Note as the fixed date on which the principal amount of such Note or such installment of interest is due and payable and (ii) any other Debt or any installment of interest thereon, means the date specified in the instrument governing such Debt as the fixed date on which the principal of such Debt or such installment of interest is due and payable, including any date upon which a repurchase at the option of the holders of such Debt is required to be consummated.

“*Subsidiary*” means, with respect to any Person, any corporation, limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Voting Interests therein is, at the time, directly or indirectly, owned by such Person and/or one or more Subsidiaries of such Person.

“*Surviving Entity*” has the meaning set forth in Section 5.1.

“*TIA*” means the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbb), as amended, as in effect on the date hereof.

“*Transaction Date*” has the meaning set forth in the definition of “Consolidated Fixed Charge Coverage Ratio.”

“*Transactions*” means the issuance of the Notes on the Issue Date, the entry into the Revolving Credit Agreement on the Issue Date, the Spin-Off (including the fees and expenses related thereto), the Burger King Acquisition (including the fees and expenses related thereto), the repayment of the existing Debt as described under “Use of Proceeds” in the Offering Memorandum, the payment of fees and expenses as described under “Use of Proceeds” in the Offering Memorandum and the transactions related thereto.

“*Transfer Restricted Global Notes*” means a Global Note that is a Transfer Restricted Note.

“*Transfer Restricted Notes*” means Notes that bear or are required to bear the Restricted Notes Legend.

“*Treasury Rate*” means, as obtained by the Issuer, with respect to the Notes, as of the applicable redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to such redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such redemption date to May 15, 2015; *provided, however*, that if the period from such redemption date to May 15, 2015 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“*Trustee*” has the meaning set forth in the preamble to this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture and, thereafter, means the successor.

“*UCC*” means the Uniform Commercial Code as in effect from time to time in the State of New York or, as the context requires in determining whether or not an asset is Excluded Collateral, the law governing the interpretation of any such agreement; *provided, however*, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“*Unrestricted Notes*” means one or more Notes that do not and are not required to bear the Restricted Notes Legend, including the Exchange Notes and any Notes registered under the Securities Act pursuant to and in accordance with the Registration Rights Agreement.

“*Unrestricted Subsidiary*” means:

- (1) any Subsidiary designated as such by the Board of Directors of the Issuer in compliance with Section 4.18; and
- (2) any Subsidiary of an Unrestricted Subsidiary.

“*Voting Interests*” means, with respect to any Person, securities of any class or classes of Capital Interests in such Person entitling the holders thereof generally to vote on the election of members of the Board of Directors or comparable body of such Person.

## SECTION 1.2 Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Act”	12.13
“Additional Assets”	4.10(a)(4)(iii)
“Affiliate Transaction”	4.11
“Agent Members”	2.6(a)
“Authentication Order”	2.2
“Carrolls Plan”	4.7(c)
“covenant defeasance”	8.3
“Custodian”	6.1(9)
“defeasance”	8.3
“Discharge”	8.8
“Event of Default”	6.1
“Excess Proceeds”	4.10(a)
“Independent Financial Advisor”	4.11(iii)
“legal defeasance”	8.2
“Note Register”	2.3
“Offer Amount”	3.9
“QIBs”	2.1(b)
“QIB Global Note”	2.1(b)
“redemption date”	3.1
“Registrar”	2.3
“Rule 144A”	2.1(b)
“Surviving Entity”	5.1(i)

### SECTION 1.3 Rules of Construction.

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it herein;
- (2) an accounting term not otherwise defined herein has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) unless otherwise specified, any reference to Section or Article refers to such Section or Article of this Indenture;
- (6) provisions apply to successive events and transactions;
- (7) references to sections of or rules under the Securities Act, the Exchange Act or the TIA shall be deemed to include substitute, replacement or successor sections or rules adopted by the Commission from time to time; and
- (8) “including” means “including without limitation”.

## ARTICLE II

### THE NOTES

#### SECTION 2.1 Form and Dating.

The Notes and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note shall be dated the date of its authentication. The Notes initially shall be issued only in denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Issuer, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(a) The Notes shall be issued initially in the form of one or more Global Notes substantially in the form attached as Exhibit A hereto and shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee as custodian for the Depositary, and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided.

Each Global Note shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions and transfers of interests. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Note Custodian, at the direction of the Trustee, in accordance with written instructions given by the Holder thereof as required by Section 2.16 hereof.

Except as set forth in Section 2.6 hereof, the Global Notes may be transferred, in whole and not in part, only to another nominee of the Depositary or to a successor of the Depositary or its nominee.

(b) The Initial Notes are being issued by the Issuer only (i) to “qualified institutional buyers” (as defined in Rule 144A under the Securities Act (“*Rule 144A*”)) (“*QIBs*”) and (ii) in reliance on Regulation S. After such initial offers, Initial Notes that are Transfer Restricted Notes may be transferred to QIBs, in reliance on Rule 144A, outside the United States pursuant to Regulation S or to the Issuer, in accordance with certain transfer restrictions. Initial Notes that are offered in reliance on Rule 144A shall be issued in the form of one or more permanent Global Notes substantially in the form set forth in Exhibit A (the “*QIB Global Note*”) deposited with the Trustee, as Note Custodian, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. Initial Notes offered and sold in reliance on Regulation S shall be issued initially in the form of the Regulation S Global Note, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, as Note Custodian for the Depositary, and registered in the name of the Depositary, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. Early termination of the Restricted Period may be effectuated upon receipt by the Trustee of (i) a written certificate from the Depositary certifying that they have received certification of non-United States beneficial ownership of 100% of the aggregate principal amount of the Regulation S Global Note (except to the extent of any beneficial owners thereof who acquired an interest therein during the Restricted Period pursuant to another exemption from registration under the Securities Act and who shall take delivery of a beneficial ownership interest in a QIB Global Note bearing a Restricted Notes Legend, all as contemplated by Section 2.6(e) hereof); and (ii) an Officers’ Certificate from the Issuer. The aggregate principal amount of the Regulation S Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided. The QIB Global Note and the Regulation S Global Note shall each be issued with separate CUSIP numbers. Transfers of Notes between QIBs and to or by purchasers pursuant to Regulation S shall be represented by appropriate increases and decreases to the respective amounts of the appropriate Global Note, as more fully provided in Section 2.16.

(c) Section 2.1(b) shall apply only to Global Notes deposited with or on behalf of the Depositary or its nominee.

The Trustee shall have no responsibility or obligation to any Holder, any member of (or a Participant in) DTC or any other Person with respect to the accuracy of the records of DTC (or its nominee) or of any Participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery of any notice (including any notice of redemption) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to the Notes. The Trustee may rely (and shall be fully protected in relying) upon information furnished by DTC with respect to its members, Participants and any Beneficial Owners in the Notes.

(d) Notes issued in certificated form, including Global Notes, shall be substantially in the form of Exhibit A attached hereto.

#### SECTION 2.2 Execution and Authentication.

An Officer shall sign the Notes for the Issuer by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

A Note shall not be valid until authenticated by the manual signature of an authorized signatory of the Trustee. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

All Notes shall be dated the date of their authentication. The Trustee shall, upon receipt of a written Issuer Order signed by one Officer directing the Trustee to authenticate and deliver the Notes and certifying that all conditions precedent to the issuance of the Notes contained herein have been complied with (an “*Authentication Order*”) and an Opinion of Counsel, authenticate Notes for original issue up to the aggregate principal amount stated in paragraph 4 of the reverse of the Notes. The aggregate principal amount of Notes outstanding at any time may not exceed such amount except as provided in Section 2.17 hereof.

The Trustee may appoint an authenticating agent reasonably acceptable to the Issuer to authenticate Notes. Unless limited by the terms of such appointment, an authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or the Issuer or an Affiliate of the Issuer.

#### SECTION 2.3 Registrar; Paying Agent.

The Issuer shall maintain (i) an office or agency where Notes may be presented for registration of transfer or for exchange (“*Registrar*”) and (ii) an office or agency where Notes may be presented for payment to a Paying Agent. The Registrar shall keep a register of the Notes (the “*Note Register*”) and of their transfer and exchange. The Issuer may appoint one or more co-registrars and one or more additional paying agents; *provided, however*, that at all times there shall be only one Note Register. The term “Registrar” includes any co-registrar and the term “Paying Agent” includes any additional paying agent. The Issuer may change any Paying Agent or Registrar without notice to any Holder. The Issuer shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. The Issuer or any Restricted Subsidiaries may act as Paying Agent or Registrar.

The Issuer initially appoints the Trustee to act as the Registrar and Paying Agent and initially appoints the Corporate Trust Office of the Trustee as the office or agency of the Issuer for such purposes and as the office or agency of the Issuer where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served and the Trustee as the agent of the Issuer to receive such notices and demands.

The Issuer initially appoints DTC to act as the Depositary with respect to the Global Notes.

#### SECTION 2.4 Paying Agent to Hold Money in Trust.

The Issuer shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent shall hold in trust for the benefit of the Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and shall notify the Trustee of any Default by the Issuer in making any such payment. While any such Default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Issuer or a Subsidiary) shall have no further liability for the money. If the Issuer or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon the occurrence of events specified in Section 6.1(8) hereof, the Trustee shall serve as Paying Agent for the Notes.

#### SECTION 2.5 Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Issuer shall furnish to the Trustee at least seven (7) Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders, including the aggregate principal amount of the Notes held by each Holder thereof, and the Trustee thereafter shall preserve such list in as current a form as is reasonably practicable.

SECTION 2.6 Book-Entry Provisions for Global Securities.

(a) Each Transfer Restricted Global Note shall (i) be registered in the name of the Depositary for such Global Notes or the nominee of such Depositary, (ii) be delivered to the Trustee as custodian for such Depositary and (iii) bear legends as required by Section 2.6(e).

Members of, or Participants in, the Depositary (“*Agent Members*”) shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depositary, or the Trustee as its custodian, or under the Global Note, and the Depositary may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Note.

(b) Transfers of a Global Note shall be limited to transfers of such Global Note in whole, but not in part, to the Depositary, its successors or their respective nominees. Interests of Beneficial Owners in a Global Note may be transferred in accordance with Section 2.16 and the rules and procedures of the Depositary. In addition, Certificated Notes shall be transferred to all Beneficial Owners in exchange for their beneficial interests if (i) the Depositary notifies the Issuer that it is unwilling or unable to continue as Depositary for the Global Notes or the Depositary ceases to be a “clearing agency” registered under the Exchange Act and a successor depositary is not appointed by the Issuer within ninety (90) days of such notice or (ii) an Event of Default of which a Responsible Officer of the Trustee has actual notice has occurred and is continuing and the Registrar has received a request from the Depositary to issue such Certificated Notes.

(c) In connection with the transfer of the entire Global Note to Beneficial Owners pursuant to clause (b) of this Section, such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and the Trustee shall upon receipt of an Authentication Order authenticate and deliver, to each Beneficial Owner identified by the Depositary in exchange for its beneficial interest in such Global Note an equal aggregate principal amount of Certificated Notes of authorized denominations.

(d) The Holder of a Global Note may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold an interest through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(e) Legends. The following legends shall appear on the face of all Global Notes and Certificated Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

(1) Restricted Notes Legend. Unless and until either (x) a Note is exchanged for an Exchange Note or sold in connection with an effective registration statement under the Securities Act and pursuant to the Registration Rights Agreement or (y) the Issuer determines that the following legend and the related restrictions on transfer are not required in order to maintain compliance with the provisions of the Securities Act and there is delivered to the Trustee an Opinion of Counsel reasonably satisfactory to the Trustee and a letter of representation of the Issuer reasonably satisfactory to the Trustee to that effect, each Global Note and each Certificated Note (and all Notes issued in exchange therefor or substitution therefor) shall bear the legend in substantially the following form:

“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF

THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO CARROLS RESTAURANT GROUP, INC. OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR (F) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) PURSUANT TO (C), (D) OR (E), THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE COMPANY SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

(2) Global Note Legend. Each Global Note shall bear a legend in substantially the following form:

"THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. THIS NOTE IS NOT EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO CARROLS RESTAURANT GROUP, INC. OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS

(f) At such time as all beneficial interests in Global Notes have been exchanged for Certificated Notes, redeemed, repurchased or cancelled, all Global Notes shall be returned to or retained and cancelled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for Certificated Notes, redeemed, repurchased or cancelled, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note, by the Trustee or the Note Custodian, at the direction of the Trustee, to reflect such reduction.

(g) General provisions relating to transfers and exchanges:

(i) To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee, upon receipt of an Authentication Order, shall authenticate Global Notes and Certificated Notes at the Registrar’s request.

(ii) No service charge shall be made to a Holder for any registration of transfer, exchange, or redemption, but the Issuer may require payment of a sum sufficient to cover any stamp or transfer tax or similar governmental charge payable in connection therewith (other than any such stamp or transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.2, 2.10, 3.6, 4.10, 4.14 and 9.4 hereto).

(iii) All Global Notes and Certificated Notes issued upon any registration of transfer or exchange of Global Notes or Certificated Notes shall, upon execution by the Issuer and authentication by the Trustee in accordance with the provisions hereof, be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Certificated Notes surrendered upon such registration of transfer or exchange.

(iv) The Registrar shall not be required (A) to issue, to register the transfer of or to exchange Notes during a period beginning at the opening of fifteen (15) days before the day of any selection of Notes for redemption under Section 3.2 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part, or (C) to register the transfer of or to exchange a Note between a record date and the next succeeding interest payment date.

(v) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuer may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and neither the Trustee, any Agent nor the Issuer shall be affected by notice to the contrary.

(vi) The Trustee shall authenticate Global Notes and Certificated Notes in accordance with the provisions of Section 2.2 hereof. Except as provided in Section 2.6(b), neither the Trustee nor the Registrar shall authenticate or deliver any Certificated Note in exchange for a Global Note.

(vii) Each Holder agrees to provide indemnity to the Issuer and the Trustee satisfactory to the Issuer and the Trustee against any liability that may result from the transfer, exchange or assignment of such Holder’s Note in violation of any provision of this Indenture and/or applicable United States federal or state securities law.

(viii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members or Beneficial Owners of interests in any Global Note) other than to require delivery of such certificates and

other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(ix) Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the Depository.

#### SECTION 2.7 Replacement Notes.

If any mutilated Note is surrendered to the Trustee, or the Issuer and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, the Issuer shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the requirements set forth in Section 2.2 are met. If required by the Trustee or the Issuer, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Issuer to protect the Issuer, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuer and the Trustee may charge a Holder for their expenses in replacing a Note.

Every replacement Note is an additional obligation of the Issuer and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

#### SECTION 2.8 Outstanding Notes.

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.8 as not outstanding. Except as set forth in Section 2.9 hereof, a Note does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Note.

If a Note is replaced pursuant to Section 2.7 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the principal amount of any Note is considered paid under Section 4.1 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Issuer, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

#### SECTION 2.9 Treasury Notes.

In determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuer or by any Affiliate of the Issuer shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent. Notwithstanding the foregoing, Notes that are to be acquired by the Issuer or an Affiliate of the Issuer pursuant to an exchange offer, tender offer or other agreement shall not be deemed to be owned by such entity until legal title to such Notes passes to such entity.

#### SECTION 2.10 Temporary Notes.

Until Certificated Notes are ready for delivery, the Issuer may prepare and the Trustee shall, upon receipt of an Authentication Order, authenticate temporary Notes. Temporary Notes shall be substantially in the form of Certificated Notes but may have variations that the Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer shall prepare and the Trustee shall, upon receipt of an Issuer Order, authenticate Certificated Notes in exchange for temporary Notes.

Holders of temporary Notes shall be entitled to all of the benefits of this Indenture.

SECTION 2.11 Cancellation.

The Issuer at any time may deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder or which the Issuer may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly cancelled by the Trustee upon receipt of an Issuer Order. All Notes surrendered for registration of transfer, exchange or payment, if surrendered to any Person other than the Trustee, shall be delivered to the Trustee. The Trustee and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation. Subject to Section 2.7 hereof, the Issuer may not issue new Notes to replace Notes that they have redeemed or paid or that have been delivered to the Trustee for cancellation. All cancelled Notes held by the Trustee shall be disposed of in accordance with its customary practice, and, at the written request of the Issuer, certification of their disposal delivered to the Issuer, unless by Issuer Order, the Issuer shall direct that cancelled Notes be returned to it.

SECTION 2.12 Defaulted Interest.

If the Issuer defaults in a payment of interest on the Notes, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, which date shall be at the earliest practicable date but in all events at least five (5) Business Days prior to the payment date, in each case at the rate provided in the Notes and in Section 4.1 hereof. The Issuer shall fix or cause to be fixed each such special record date and payment date and shall promptly thereafter notify the Trustee in writing of any such date. At least fifteen (15) days before the special record date, the Issuer (or the Trustee, in the name and at the expense of the Issuer) shall mail or cause to be mailed to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

SECTION 2.13 Record Date.

The record date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee in accordance with Section 2.5.

SECTION 2.14 Computation of Interest.

Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

SECTION 2.15 CUSIP Number.

The Issuer in issuing the Notes may use a "CUSIP" and/or ISIN or other similar number, and if it does so, the Issuer may use the CUSIP and/or ISIN or other similar number in notices of redemption or exchange as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP and/or ISIN or other similar number printed in the notice or on the Notes and that reliance may be placed only on the other identification numbers printed on the Notes. The Issuer shall promptly notify the Trustee of any change in the CUSIP and/or ISIN or other similar number.

SECTION 2.16 Special Transfer Provisions.

Unless and until (i) a Transfer Restricted Note is exchanged for an Exchange Note or sold in connection with an effective shelf registration statement under the Securities Act pursuant to the Registration Rights Agreement or (ii) the Restricted Notes Legend is no longer required pursuant to Section 2.16(d), the following provisions shall apply:

(a) Transfers to QIBs. The following provisions shall apply with respect to the registration of any proposed transfer of a Transfer Restricted Note (other than pursuant to Regulation S):

(i) The Registrar shall register the transfer of a Transfer Restricted Note by a Holder to a QIB if such transfer is being made by a proposed transferor who has provided the Registrar with (a) an appropriately completed certificate of transfer in the form attached to the Note and (b) a letter substantially in the form set forth in Exhibit C hereto.

(ii) If the proposed transferee is an Agent Member and the Transfer Restricted Note to be transferred consists of an interest in the Regulation S Global Note, upon receipt by the Registrar of (x) the items required by paragraph (i) above and (y) instructions given in accordance with the Depositary's and the Registrar's procedures therefor, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the QIB Global Note in an amount equal to the principal amount of the beneficial interest in the Regulation S Global Note to be so transferred, and the Registrar shall reflect on its books and records the date and an appropriate decrease in the principal amount of such Regulation S Global Note.

(b) Transfers Pursuant to Regulation S. The following provisions shall apply with respect to registration of any proposed transfer of a Transfer Restricted Note pursuant to Regulation S:

(i) The Registrar shall register any proposed transfer of a Transfer Restricted Note pursuant to Regulation S by a Holder upon receipt of (a) an appropriately completed certificate of transfer in the form attached to the Note and (b) a letter substantially in the form set forth in Exhibit D hereto from the proposed transferor.

(ii) If the proposed transferee is an Agent Member holding a beneficial interest in a QIB Global Note and the Transfer Restricted Note to be transferred consists of an interest in a QIB Global Note, upon receipt by the Registrar of (x) the letter, if any, required by paragraph (i) above and (y) instructions in accordance with the Depositary's and the Registrar's procedures therefor, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Regulation S Global Note in an amount equal to the principal amount of the beneficial interest in the QIB Global Note to be transferred, and the Registrar shall reflect on its books and records the date and an appropriate decrease in the principal amount of the QIB Global Note.

(c) Exchange Offer. Upon the occurrence of the Exchange Offer in accordance with the Registration Rights Agreement, the Issuer shall issue and, upon receipt of an Authentication Order in accordance with Section 2.2, the Trustee shall authenticate, one or more Global Notes not bearing the Restricted Notes Legend in an aggregate principal amount equal to the principal amount of the beneficial interests in the Transfer Restricted Global Notes tendered for acceptance in accordance with the Exchange Offer and accepted for exchange in the Exchange Offer. Concurrently with the issuance of such Global Notes, the Registrar shall cause the aggregate principal amount of the applicable Transfer Restricted Global Notes to be reduced accordingly, and the Registrar shall deliver to the Persons designated by the Holders of Transfer Restricted Global Notes so accepted Global Notes not bearing the Restricted Notes Legend in the appropriate principal amount.

(d) Restricted Notes Legend. Upon the transfer, exchange or replacement of Unrestricted Notes, the Registrar shall deliver Unrestricted Notes that do not bear the Restricted Notes Legend. Upon the transfer, exchange or replacement of Transfer Restricted Notes, the Registrar shall deliver only Transfer Restricted Notes that bear the Restricted Notes Legend unless the Restricted Notes Legend is no longer required by this Section 2.16(d), or the Issuer determines and there is delivered to the Trustee an Opinion of Counsel reasonably satisfactory to the Trustee and a letter of representation of the Issuer reasonably satisfactory to the Trustee to the effect that neither such legend nor the related restrictions on transfer are required or appropriate in order to ensure that subsequent transfers of the Notes are effected in compliance with the Securities Act.

(e) General. By its acceptance of any Note bearing the Restricted Notes Legend, each Holder of such a Note acknowledges receipt of a Transfer Restricted Note with restrictions on transfer of such Note set forth in this Indenture and in the Restricted Notes Legend and agrees that it shall transfer such Note only as provided in this Indenture.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to this Section 2.16.

SECTION 2.17 Issuance of Additional Notes.

The Issuer shall be entitled to issue Additional Notes under this Indenture that shall have identical terms as the Initial Notes, other than with respect to the date of issuance, issue price, amount of interest payable on the first interest payment date applicable thereto and any customary escrow provisions, transfer restrictions and any registration rights agreement and additional interest with respect thereto; *provided* that such issuance is not otherwise prohibited by the terms of this Indenture, including Section 4.9. The Initial Notes and any Additional Notes and Exchange Notes shall be, without limitation, treated as a single class for all purposes under this Indenture.

With respect to any Additional Notes, the Issuer shall set forth in a resolution of its Board of Directors and in an Officers' Certificate, a copy of each of which shall be delivered to the Trustee, along with an Opinion of Counsel which will address conditions precedent, due authorization, execution and enforceability, the following information:

- (1) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture;
- (2) the issue price, the Issue Date, the CUSIP number of such Additional Notes, the first interest payment date and the amount of interest payable on such first interest payment date applicable thereto and the date from which interest shall accrue;
- (3) whether such Additional Notes shall be Transfer Restricted Notes; and
- (4) an Authentication Order.

ARTICLE III

REDEMPTION AND PREPAYMENT

SECTION 3.1 Notices to Trustee.

If the Issuer elects to redeem Notes pursuant to the optional redemption provisions of Section 3.7 hereof, it shall furnish to the Trustee, at least forty-five (45) days (or such shorter period as is acceptable to the Trustee) before a date fixed for redemption (the "*redemption date*"), an Officers' Certificate setting forth (i) the Section of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Notes to be redeemed and (iv) the Redemption Price.

SECTION 3.2 Selection of Notes to Be Redeemed.

If less than all of the Notes are to be redeemed at any time, the Trustee shall select the Notes to be redeemed among the Holders in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not so listed, on a *pro rata* basis, by lot or by such method as the Trustee shall deem fair and appropriate (and in a manner that complies with applicable legal requirements and, as applicable the procedures of the DTC); *provided* that no Notes of \$2,000 or less shall be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption that relates to such Note shall state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion of the original Note will be issued in the name of the Holder thereof upon cancellation of the original Note. On and after the redemption date, interest shall cease to accrue on Notes or portions of them called for redemption. The Trustee shall make the selection from the Notes outstanding and not previously called for redemption and shall promptly notify the Issuer in writing of the Notes selected for redemption. The Trustee may select for redemption portions (equal to \$1,000 or any integral multiple thereof) of the principal of the Notes that have denominations larger than \$2,000.

### SECTION 3.3 Notice of Redemption.

Subject to the provisions of Section 3.9, at least 30 days but not more than 60 days before a redemption date, the Issuer shall mail or cause to be mailed by first class mail (and, to the extent permitted by applicable procedures or regulations, electronically), a notice of redemption to each Holder whose Notes are to be redeemed at its registered address.

The notice shall identify the Notes (including the CUSIP numbers, if any) to be redeemed and shall state:

(1) the redemption date;

(2) the Redemption Price;

(3) if any Note is being redeemed in part, the portion of the principal amount of such Notes to be redeemed and that, after the redemption date, upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Note;

(4) the name, telephone number and address of the Paying Agent;

(5) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;

(6) that, unless the Issuer defaults in making such redemption payment, interest, if any, on Notes called for redemption ceases to accrue on and after the redemption date;

(7) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(8) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

At the Issuer's written request, the Trustee shall give the notice of redemption in the Issuer's name and at the Issuer's expense; *provided, however*, that the Issuer shall have delivered to the Trustee at least 45 days prior to the redemption date (or such shorter period as is acceptable to the Trustee), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in the notices as provided in the preceding paragraph. The notice mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not a Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Note shall not affect the validity of the proceeding for the redemption of any other Note.

### SECTION 3.4 Effect of Notice of Redemption.

Once notice of redemption is mailed in accordance with Section 3.3 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the Redemption Price plus accrued and unpaid interest, if any, to such date. A notice of redemption may not be conditional.

### SECTION 3.5 Deposit of Redemption of Purchase Price.

Prior to 10:00 a.m New York City time, on each redemption date or the date on which Notes must be accepted for purchase pursuant to Section 4.10 or 4.14, the Issuer shall deposit with the Trustee or with the Paying Agent (or, if the Issuer or a Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the Redemption Price of and accrued and unpaid interest, if any, on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent shall promptly return to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the Redemption Price of (including any Applicable Premium), and accrued interest, if any, on, all Notes to be redeemed or purchased.

### SECTION 3.6 Notes Redeemed in Part.

Upon surrender of a Note that is redeemed in part, the Issuer shall issue and, upon receipt of an Issuer Order, the Trustee shall authenticate for the Holder at the expense of the Issuer a new Note equal in principal amount to the unredeemed portion of the Note surrendered.

### SECTION 3.7 Optional Redemption.

(a) The Notes may be redeemed, in whole or in part, at any time prior to May 15, 2015, at the option of the Issuer, upon not less than 30 nor more than 60 days' prior notice mailed by first class mail to each Holder's registered address, at a Redemption Price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to but not including, the applicable redemption date (subject to the right of Holders on the relevant record date to receive interest due on the relevant interest payment date).

(b) The Notes are subject to redemption, at the option of the Issuer, in whole or in part, at any time on or after May 15, 2015, upon not less than 30 nor more than 60 days' notice at the Redemption Prices (expressed as percentages of the principal amount to be redeemed) set forth below, plus accrued and unpaid interest, if any, to, but not including, the redemption date (subject to the right of Holders of record on the relevant regular record date to receive interest due on an interest payment date), if redeemed during the 12-month period beginning on May 15 of the years indicated:

<u>Year</u>	<u>Redemption Price</u>
2015	105.625%
2016	102.813%
2017 and thereafter	100.00%

(c) Prior to May 15, 2015, the Issuer may, with the net proceeds of one or more Equity Offerings, redeem up to 35% of the aggregate principal amount of the outstanding Notes (including Additional Notes) at a Redemption Price equal to 111.250% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to but not including the date of redemption; *provided* that at least 65% of the principal amount of Notes then outstanding (including Additional Notes) remains outstanding immediately after the occurrence of such redemption (excluding Notes held by the Issuer or its Subsidiaries) and that any such redemption occurs within 90 days following the closing of any such Equity Offering.

### SECTION 3.8 Mandatory Redemption.

The Issuer shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

### SECTION 3.9 Offer to Purchase.

In the event that the Issuer shall be required to commence an Offer to Purchase pursuant to an Asset Sale Offer or as a result of a Change of Control, the Issuer shall follow the procedures specified below.

Unless otherwise required by applicable law, an Offer to Purchase shall specify an Expiration Date of the Offer to Purchase, which shall be, subject to any contrary requirements of applicable law, not less than 30 days or more than 60 days after the date of mailing of such Offer, and a Purchase Date for purchase of Notes within five Business Days after the Expiration Date. On the Purchase Date, the Issuer shall purchase the aggregate principal amount of Notes required to be purchased pursuant to Section 4.10 or Section 4.14 hereof (the "*Offer Amount*"), or if less than the Offer Amount has been tendered, all Notes tendered in response to the Offer to Purchase. If the Purchase Date is on or after the interest record date and on or before the related interest payment date, any accrued and unpaid interest, if any, shall be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest, if any, shall be payable to the Holders who tender Notes pursuant to the Offer.

to Purchase. The Issuer shall notify the Trustee at least 15 days (or such shorter period as is acceptable to the Trustee) prior to the mailing of the Offer of the Issuer's obligation to make an Offer to Purchase, and the Offer shall be mailed by the Issuer or, at the Issuer's request, by the Trustee in the name and at the expense of the Issuer. The Offer shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Purchase.

On the Business Day preceding each Purchase Date, the Issuer shall irrevocably deposit with the Trustee or Paying Agent (or, if the Issuer or a Subsidiary is the Paying Agent, shall segregate and hold in trust) in immediately available funds the aggregate purchase price equal to the Offer Amount, together with accrued and unpaid interest, if any, thereon, to be held for payment in accordance with the terms of this Section 3.9. On the Purchase Date, the Issuer shall, to the extent lawful, (i) accept for payment, on a *pro rata* basis to the extent necessary in the case of an Asset Sale Offer, the Offer Amount of Notes or portions thereof tendered pursuant to the Offer to Purchase, or if less than the Offer Amount has been tendered, all Notes tendered, (ii) deliver or cause the Paying Agent or Depositary, as the case may be, to deliver to the Trustee Notes so accepted and (iii) deliver to the Trustee an Officers' Certificate stating that such Notes or portions thereof were accepted for payment by the Issuer in accordance with the terms of this Section 3.9. The Issuer shall promptly (but in any case not later than three (3) Business Days after the Purchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Issuer for purchase, plus any accrued and unpaid interest, if any, thereon, and the Issuer shall promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver at the expense of the Issuer such new Note to such Holder, equal in principal amount to any unpurchased portion of such Holder's Notes surrendered. Any Note not so accepted shall be promptly mailed or delivered by the Issuer to the Holder thereof. The Issuer shall publicly announce in a newspaper of general circulation or in a press release provided to a nationally recognized financial wire service the results of the Offer to Purchase on the Purchase Date.

#### ARTICLE IV

#### COVENANTS

##### SECTION 4.1 Payment of Notes.

(a) The Issuer shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest shall be considered paid for all purposes hereunder on the date the Paying Agent, if other than the Issuer or a Subsidiary, holds, as of 10:00 a.m. (New York City time), money deposited by the Issuer in immediately available funds and designated for and sufficient to pay all such principal, premium, if any, and interest then due.

(b) The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to the then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

##### SECTION 4.2 Maintenance of Office or Agency.

The Issuer shall maintain an office or agency (which may be an office of the Trustee or an Affiliate of the Trustee or Registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. The Issuer hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Issuer in accordance with Section 2.3 hereof. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee and the Issuer hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Issuer shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

#### SECTION 4.3 Provision of Financial Information.

Whether or not required by the Commission, so long as any Notes are outstanding, the Issuer will furnish without cost to the Trustee and the Holders of Notes, or file electronically with the Commission through the Commission's Electronic Data Gathering, Analysis and Retrieval System (or any successor system), within 15 days after the time periods specified in the Commission's rules and regulations:

(1) all quarterly and annual reports, including financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if the Issuer were required to file such Forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report on the annual financial statements by the Issuer's certified independent accountants; and

(2) all current reports that would be required to be filed with the Commission on Form 8-K if the Issuer were required to file such reports.

Notwithstanding the foregoing, (a) the Issuer may satisfy its obligations to deliver the information and reports referred to in clauses (1) and (2) above by filing the same with the Commission for public availability within the time periods specified in the Commission's rules and regulations (unless the Commission will not accept such a filing) and make such information available to prospective investors (b) unless required by the rules and regulations of the Commission, no certifications or attestations concerning disclosure controls and procedures or internal controls, and no certifications, that would otherwise be required pursuant to the Sarbanes-Oxley Act of 2002 will be required at any time when it would not otherwise be subject to such statute and (c) nothing contained in this Indenture shall otherwise require the Issuer to comply with the terms of the Sarbanes-Oxley Act of 2002 at any time when it would not otherwise be subject to such statute. In addition, the Issuer and the Guarantors have agreed that, for so long as any Notes remain outstanding, they will furnish to the Holders and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

If the Issuer has designated any of its Subsidiaries as Unrestricted Subsidiaries, then, to the extent such Unrestricted Subsidiaries constitute in the aggregate in excess of either 5.0% of the Issuer's Consolidated Net Tangible Assets or 5.0% of the Issuer's consolidated revenues, the quarterly and annual financial information required by the preceding paragraph shall include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in "Management's Discussion and Analysis of Financial Condition and Results of Operations," of the financial condition and results of operations of the Issuer and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Issuer.

#### SECTION 4.4 Compliance Certificate.

The Issuer shall deliver to the Trustee, within 120 days after the end of each fiscal year commencing December 31, 2012, an Officers' Certificate stating that in the course of the performance by the signers of their duties as Officers of the Issuer they would normally have knowledge of any Default or stating that a review of the activities of the Issuer and its Subsidiaries during such period has been made under their supervision with a view to determining whether the Issuer has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that, to his or her knowledge, no Default or Event of Default has occurred during such period (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Issuer is taking or proposes to take with respect thereto).

The Issuer shall, so long as any of the Notes are outstanding, deliver to the Trustee, forthwith upon becoming aware and in any event within 15 days of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Issuer is taking or proposes to take with respect thereto.

#### SECTION 4.5 Taxes.

The Issuer shall pay, and shall cause each of its Subsidiaries to pay, prior to delinquency all material taxes, assessments and governmental levies, except such as are contested in good faith and by appropriate proceedings and with respect to which appropriate reserves have been taken in accordance with GAAP or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

#### SECTION 4.6 Stay, Extension and Usury Laws.

The Issuer covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuer and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

#### SECTION 4.7 Limitation on Restricted Payments.

The Issuer will not, and will not permit any of the Restricted Subsidiaries to, directly or indirectly, make any Restricted Payment unless, at the time of the proposed Restricted Payment:

- (a) no Event of Default shall have occurred and be continuing or will occur as a consequence thereof;
- (b) after giving effect to such Restricted Payment, the Issuer would be permitted to Incur at least \$1.00 of additional Debt (other than Permitted Debt) pursuant to Section 4.9(a); and
- (c) after giving effect to such Restricted Payment, the aggregate amount expended or declared for all Restricted Payments made on or after the Issue Date (excluding Restricted Payments permitted by clauses (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix) and (x) of the next succeeding paragraph), shall not exceed the sum (without duplication) of
  - (1) 50% of the Consolidated Net Income (or if Consolidated Net Income shall be a deficit, 100% of such deficit) of the Issuer and its Restricted Subsidiaries for the period (taken as one accounting period) from July 2, 2012 to the end of the Issuer's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment, *plus*
  - (2) 100% of the aggregate Net Cash Proceeds received by the Issuer subsequent to the initial issuance of the Notes either (i) as a contribution to its common equity capital or (ii) from the issuance and sale (other than to a Restricted Subsidiary) of its Qualified Capital Interests, including Qualified Capital Interests issued upon the conversion of Debt or Redeemable Capital Interests of the Issuer, and from the exercise of options, warrants or other rights to purchase such Qualified Capital Interests (other than, in each case, Capital Interests or Debt sold to a Subsidiary of the Issuer), *plus*
  - (3) 100% of the amount by which Debt of the Issuer is reduced on the Issuer's consolidated balance sheet upon the conversion or exchange (other than by a Subsidiary of the Issuer) subsequent to the initial issuance of the Notes of any Debt for Qualified Capital Interests of the Issuer (less the amount of any cash, or the fair value of any other property, distributed by the Issuer upon such conversion or exchange), *plus*
  - (4) 100% of the net reduction in Investments (other than Permitted Investments), subsequent to the date of the initial issuance of the Notes, in any Person, resulting from (x) payments

of interest on Debt, dividends, distributions, redemption, repurchases, repayments of loans or advances or other transfers of assets (but only to the extent such interest, dividends, distributions, redemptions, repurchases, repayments or other transfers were made in (i) cash or (ii) assets (valued at Fair Market Value) other than cash (other than pay-in-kind dividends or interest)), in each case to the Issuer or any Restricted Subsidiary from any Person (including, without limitation, an Unrestricted Subsidiary), (y) the sale or other disposition (other than to the Issuer or a Restricted Subsidiary) thereof made by the Issuer and the Restricted Subsidiaries or (z) the redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary, in each case, not to exceed in the case of any Person the amount of Investments (other than Permitted Investments) previously made by the Issuer or any Restricted Subsidiary in such Person.

Notwithstanding the foregoing provisions, the Issuer and the Restricted Subsidiaries may take the following actions; *provided* that, in the cases of clauses (iv) and (x) below, no Event of Default has occurred and is continuing unless, in the case of clause (iv), the Issuer or any Restricted Subsidiary is contractually required to make a payment as described in such clause (iv):

(i) the payment of any dividend or other distribution or the consummation of any irrevocable redemption on Capital Interests in the Issuer or a Restricted Subsidiary within 60 days after declaration or setting the record date for redemption thereof, as applicable, if at such date such payment would not have been prohibited by the foregoing provisions of this covenant;

(ii) the retirement of any Capital Interests of the Issuer by conversion into, or by or in exchange for, Qualified Capital Interests, or out of net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of the Issuer) of other Qualified Capital Interests of the Issuer;

(iii) the redemption, defeasance, repurchase or acquisition or retirement for value of any Debt of the Issuer or a Guarantor that is subordinate in right of payment to the Notes or the applicable Note Guarantee out of the net cash proceeds of a substantially concurrent issue and sale (other than to a Subsidiary of the Issuer) of (x) new Refinancing Debt Incurred in accordance with this Indenture or (y) of Qualified Capital Interests of the Issuer;

(iv) the purchase, redemption, retirement or other acquisition for value of Capital Interests in the Issuer or, to the extent still outstanding under the Issuer's 2006 Stock Incentive Plan (the "*Carrols Plan*"), Capital Interests in Fiesta Restaurant Group, Inc. held by employees, officers or directors or by former employees, officers or directors of the Issuer or any Restricted Subsidiary (or their estates or beneficiaries under their estates) upon death, disability, retirement or termination of employment; *provided* that the aggregate consideration paid for such purchase, redemption, retirement or other acquisition of such Capital Interests does not exceed the sum of (A) \$2.5 million in any fiscal year (*provided* that if less than \$2.5 million is used for such purposes in any fiscal year, any unused amounts may be carried forward for use in one or more future periods; *provided, further,* that the aggregate amount of repurchases made pursuant to this clause (iv) (A) may not exceed \$5.0 million in any fiscal year); plus (B) the cash proceeds of key man life insurance policies received by the Issuer and its Restricted Subsidiaries after the Issue Date (it being understood that the Issuer may elect to apply all or any portion of the aggregate increase contemplated by this clause (B) in any calendar year);

(v) repurchase of Capital Interests in the Issuer deemed to occur upon the exercise of stock options, warrants or other convertible or exchangeable securities to the extent such Capital Interests represent a portion of the exercise price of those stock options, warrants or other convertible or exchangeable securities or repurchase of such Capital Interests to the extent the proceeds of such repurchase are used to pay taxes incurred by the holder thereof as a result of the issuance or grant thereof;

(vi) the prepayment of intercompany Debt, the Incurrence of which was permitted pursuant to Section 4.9;

(vii) cash payment, in lieu of issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for the Capital Interests of the Issuer or a Restricted Subsidiary;

(viii) the declaration and payment of dividends to holders of any class or series of Redeemable Capital Interests of the Issuer or any Restricted Subsidiary issued or Incurred in compliance with Section 4.9;

(ix) upon the occurrence of a Change of Control or an Asset Sale, the defeasance, redemption, repurchase or other acquisition of any subordinated Debt pursuant to provisions substantially similar to those set forth in Section 4.10 and 4.14 in accordance with the terms of such subordinated Debt; *provided* that prior to or contemporaneously with such defeasance, redemption, repurchase or other acquisition, the Issuer has made an Offer to Purchase with respect to the Notes and has repurchased all Notes validly tendered for payment and not withdrawn in connection therewith; and

(x) other Restricted Payments in an aggregate amount since the Issue Date not in excess of \$15.0 million.

For purposes of this Section 4.7, if any Investment or Restricted Payment would be permitted pursuant to one or more provisions described above and/or one or more of the exceptions contained in the definition of "Permitted Investments," the Issuer may classify such Investment or Restricted Payment in any manner that complies with this Section 4.7 and may later reclassify any such Investment or Restricted Payment so long as the Investment or Restricted Payment (as so reclassified) would be permitted to be made in reliance on the applicable exception as of the date of such reclassification.

If any Person in which an Investment is made, which Investment constitutes a Restricted Payment when made, thereafter becomes a Restricted Subsidiary in accordance with this Indenture, all such Investments previously made in such Person shall no longer be counted as Restricted Payments for purposes of calculating the aggregate amount of Restricted Payments pursuant to clause (c) of the first paragraph under this Section 4.7 or clause (x) of the second paragraph under this Section 4.7, in each case to the extent such Investments would otherwise be so counted.

If the Issuer or a Restricted Subsidiary transfers, conveys, sells, leases or otherwise disposes of an Investment in accordance with Section 4.10, which Investment was originally included in the aggregate amount expended or declared for all Restricted Payments pursuant to clause (c) of the first paragraph of this Section 4.7, the aggregate amount expended or declared for all Restricted Payments shall be reduced by the lesser of (i) the Net Cash Proceeds from the transfer, conveyance, sale, lease or other disposition of such Investment or (ii) the amount of the original Investment, in each case, to the extent originally included in the aggregate amount expended or declared for all Restricted Payments pursuant to clause (c) of the first paragraph of this Section 4.7.

For purposes of this Section 4.7, if a particular Restricted Payment involves a non-cash payment, including a distribution of assets, then such Restricted Payment shall be deemed to be an amount equal to the cash portion of such Restricted Payment, if any, plus an amount equal to the Fair Market Value of the non-cash portion of such Restricted Payment.

#### SECTION 4.8 Limitation on Dividends and Other Payments Affecting Restricted Subsidiaries.

The Issuer will not, and will not permit any of the Restricted Subsidiaries to, directly or indirectly, cause or suffer to exist or become effective or enter into any encumbrance or restriction (other than pursuant to this Indenture, law, rules or regulation) on the ability of any Restricted Subsidiary to (i) pay dividends or make any other distributions on its Capital Interests owned by any of the Issuer or Restricted Subsidiaries or pay any Debt or other obligation owed to any of the Issuer or Restricted Subsidiaries, (ii) make loans or advances to any of the Issuer or Restricted Subsidiaries thereof or (iii) transfer any of its property or assets to the Issuer or any Restricted Subsidiaries.

However, the preceding restrictions will not apply to the following encumbrances or restrictions existing under or by reason of:

- (a) any encumbrance or restriction in existence on the Issue Date and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings thereof; *provided* that the amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings, in the good faith judgment of the Issuer, are not materially more restrictive, taken as a whole, with respect to such dividend or other payment restrictions than those contained in these agreements on the Issue Date or refinancings thereof;
- (b) any encumbrance or restriction pursuant to an agreement relating to an acquisition of property, so long as the encumbrances or restrictions in any such agreement relate solely to the property so acquired (and are not or were not created in anticipation of the acquisition thereof by the Issuer or a Restricted Subsidiary);
- (c) any encumbrance or restriction which exists with respect to a Person that becomes a Restricted Subsidiary after the Issue Date, which is in existence at the time such Person becomes a Restricted Subsidiary, but not created in connection with or in anticipation of such Person becoming a Restricted Subsidiary, and which is not applicable to any Person or the property or assets of any Person other than such Person or the property or assets of such Person becoming a Restricted Subsidiary;
- (d) any encumbrance or restriction pursuant to an agreement effecting a permitted renewal, refunding, replacement, refinancing or extension of Debt issued pursuant to an agreement containing any encumbrance or restriction referred to in the foregoing clauses (a) through (c), so long as the encumbrances and restrictions contained in any such refinancing agreement are no less favorable in any material respect to the Holders than the encumbrances and restrictions contained in the agreements governing the Debt being renewed, refunded, replaced, refinanced or extended in the good faith judgment of the Board of Directors of the Issuer;
- (e) customary provisions restricting subletting or assignment of any lease, contract, or license of the Issuer or any Restricted Subsidiary or provisions in agreements that restrict the assignment of such agreement or any rights thereunder;
- (f) any restriction on the sale or other disposition of assets or property securing Debt as a result of a Permitted Lien on such assets or property;
- (g) any encumbrance or restriction by reason of applicable law, rule, regulation or order;
- (h) any encumbrance or restriction under this Indenture, the Notes and the Note Guarantees;
- (i) restrictions on cash and other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;
- (j) provisions with respect to the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements entered into in the ordinary course of business;
- (k) any instrument governing Debt or Capital Interests of a Person acquired by the Issuer or any of the Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Debt or Capital Interests was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired;
- (l) Liens securing Debt otherwise permitted to be incurred under this Indenture, including pursuant to Section 4.12, that limit the right of the debtor to dispose of the assets subject to such Liens;

(m) provisions of the Credit Facility as in effect on the Issue Date and provisions of any other Credit Facility that, as determined by management of the Issuer in its reasonable and good faith judgment, (i) will not materially impair the Issuer's ability to make payments required under the Notes and (ii) are not materially more restrictive, taken as a whole, than the provisions under the Credit Facility as in effect on the Issue Date;

(n) provisions of any agreement evidencing Debt incurred under Section 4.9 that, as determined by management of the Issuer in its reasonable and good faith judgment, (i) will not materially impair the Issuer's ability to make payments required under the Notes and (ii) are not materially more restrictive, taken as a whole, than customary for financings of this type; and

(o) solely with respect to clause (iii) in the first paragraph of this Section 4.8, encumbrances and restrictions under the Franchise Agreements (including without limitation, the Burger King Rights) and in leases and subleases of restaurant locations entered into by the Issuer or any of its Subsidiaries with Burger King Corporation, in each case, in the ordinary course of business.

#### SECTION 4.9 Limitation on Incurrence of Debt.

(a) The Issuer will not, and will not permit any of the Restricted Subsidiaries to, Incur any Debt (including Acquired Debt); *provided* that the Issuer and any of the Restricted Subsidiaries that is a Guarantor may Incur Debt (including Acquired Debt) if, immediately after giving effect to the Incurrence of such Debt and the receipt and application of the proceeds therefrom, (a) the Consolidated Fixed Charge Coverage Ratio of the Issuer and its Restricted Subsidiaries would be greater than 2.0:1.0 and (b) no Default or Event of Default shall have occurred and be continuing at the time or as a consequence of the Incurrence of such Debt.

(b) Notwithstanding paragraph (a) above, the Issuer and the Restricted Subsidiaries may Incur "Permitted Debt" as follows:

(i) Debt incurred pursuant to, and the issuance or creation of letters of credit and bankers' acceptances under or in connection with (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the maximum potential liability of the Issuer and its Restricted Subsidiaries thereunder), any Credit Facility in an aggregate principal amount outstanding under this clause (i) at any time not to exceed the greater of (x) \$25.0 million and (y) 75% of Consolidated EBITDA of the Issuer and its Restricted Subsidiaries for the Four-Quarter Period most recently ended prior to the date of such Incurrence; *provided* that with respect to any revolving credit commitments under any Credit Facility, any Debt thereunder will be deemed to be Incurred on the date the Issuer obtains such revolving credit commitments for the purposes of this clause (i) regardless of when any borrowings, repayments or reborrowings under such commitments are made;

(ii) Debt outstanding under the Notes (excluding any Additional Notes) and Guarantees of the Notes and contribution, indemnification and reimbursement obligations owed by the Issuer or any Guarantor to any of the other of them in respect of amounts paid or payable on such Notes;

(iii) Debt of the Issuer or any Restricted Subsidiary outstanding at the time of the Issue Date (other than clauses (i) or (ii) above);

(iv) Debt Incurred following the Issue Date that is owed to and held by the Issuer or a Restricted Subsidiary; *provided* that if such Debt is owed by the Issuer or a Guarantor to a Restricted Subsidiary that is not a Guarantor, such Debt shall be subordinated to the prior payment in full of the Obligations;

(v) Guarantees Incurred by the Issuer or a Restricted Subsidiary of Debt or other obligations of the Issuer or a Restricted Subsidiary; *provided* that (a) such Debt is Permitted Debt or is otherwise Incurred in accordance with this Section 4.9 and (b) such Guarantees are subordinated to the Notes to the same extent as the Debt being guaranteed;

(vi) Debt Incurred in respect of workers' compensation claims, self-insurance obligations, indemnity, bid, performance, warranty, release, appeal, surety and similar bonds, letters of credit for operating purposes and completion guarantees provided or Incurred (including Guarantees thereof) by the Issuer or a Restricted Subsidiary in the ordinary course of business;

(vii) Debt under Hedging Obligations entered into to manage fluctuations in interest rates, commodity prices and currency exchange rates (and not for speculative purposes);

(viii) Debt of the Issuer or any Restricted Subsidiary pursuant to Capital Lease Obligations and Purchase Money Debt; *provided* that the aggregate principal amount of such Debt outstanding at any time under this clause (viii) may not exceed \$15.0 million in the aggregate;

(ix) the issuance by any of the Restricted Subsidiaries to the Issuer or to any of the Restricted Subsidiaries of shares of preferred stock; *provided, however, that:*

(a) any subsequent issuance or transfer of Capital Interests that results in any such preferred stock being held by a Person other than the Issuer or Restricted Subsidiaries; and

(b) any sale or other transfer of any such preferred stock to a Person that is not either the Issuer or a Restricted Subsidiary;

shall be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this clause (ix);

(x) Debt arising from (x) customary cash management services and automated clearing house transactions, (y) any Bank Product or (z) the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; *provided, however, that* any such Debt Incurred pursuant to clause (z) is extinguished within five business days of the Incurrence;

(xi) Debt of the Issuer or any Restricted Subsidiary not otherwise permitted pursuant to this definition, in an aggregate principal amount not to exceed \$10.0 million at any time outstanding;

(xii) Refinancing Debt in respect of any Debt permitted by clauses (ii) and (iii) above, this clause (xii) or Debt Incurred in accordance with clause (a) of this Section 4.9;

(xiii) Debt of the Issuer or any Restricted Subsidiary consisting of take-or-pay obligations contained in supply arrangements in the ordinary course of business; and

(xiv) Debt consisting of Debt issued by the Issuer or any of its Restricted Subsidiaries to current or former officers, directors, employees and consultants thereof, their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of the Issuer or any direct or indirect parent company of the Issuer to the extent pursuant to clause (iv) of the second paragraph of Section 4.7.

(c) For purposes of determining compliance with this Section 4.9, (x) the outstanding principal amount of any Debt shall be counted only once such that (without limitation) any obligation arising under any Guarantees or obligations with respect to letters of credit supporting Debt otherwise included in the determination of such particular amount shall not be included and (y) except as provided above, in the event that an item of Debt meets the criteria of more than one of the types of Debt described above, including categories of Permitted Debt and paragraph (a) of this Section 4.9, the Issuer, in its sole discretion, shall classify, and from time to time may reclassify, all or any portion of such item of Debt.

(d) The accrual of interest, the accretion or amortization of original issue discount and the payment of interest on Debt in the forms of additional Debt or payment of dividends on Capital Interests in the forms of additional

shares of Capital Interests with the same terms and changes in the amount outstanding due solely to the result of fluctuations in the exchange rates of currencies will not be deemed to be an Incurrence of Debt or issuance of Capital Interests for purposes of this Section 4.9.

(e) Notwithstanding anything to the contrary herein, the maximum amount of Debt that may be outstanding pursuant to this Section 4.9 will not be deemed exceeded due to the results of fluctuations in exchange rates or currency values. For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Debt, the U.S. dollar equivalent principal amount of Debt denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Debt was Incurred.

(f) None of the Issuer and Guarantors will Incur any Debt that pursuant to its terms is subordinate or junior in right of payment to any Debt unless such Debt is subordinated in right of payment to the Notes and the Note Guarantees to the same extent; *provided* that Debt will not be considered subordinate or junior in right of payment to any other Debt solely by virtue of being unsecured or secured to a greater or lesser extent or with greater or lower priority.

#### SECTION 4.10 Limitation on Asset Sales.

(a) The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly consummate an Asset Sale, unless:

(1) other than in the case of an Event of Loss, the Issuer or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value (as determined in good faith by the Issuer) of the assets sold or otherwise disposed of;

(2) other than in the case of an Event of Loss, at least 75% of the consideration therefor received by the Issuer or such Restricted Subsidiary, as the case may be, is in the form of cash, Eligible Cash Equivalents or Additional Assets;

(3) to the extent that any consideration received by the Issuer or a Restricted Subsidiary in such Asset Sale constitute securities or other assets that constitute Collateral, such securities or other assets, including the assets of any Person that becomes a Guarantor as a result of such transaction, are promptly following their acquisition added to the Collateral securing the Notes; and

(4) no Default or Event of Default shall have occurred and be continuing at the time of, or would occur after giving effect, on a pro forma basis, to, such Asset Sale.

Within 365 days after the Issuer's or a Restricted Subsidiary's receipt of the Net Cash Proceeds of any Asset Sale covered by this clause (a), the Issuer or such Restricted Subsidiary, at its option, may apply the Net Cash Proceeds from such Asset Sale:

(i) to prepay, repay or otherwise purchase First Lien Obligations; *provided, however*, that in connection with any prepayment, repayment or purchase of Debt pursuant to this clause (i), the Issuer or such Restricted Subsidiary shall permanently retire such Debt and shall cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid or purchased;

(ii) to make one or more offers to the holders of the Notes (and, at the option of the Issuer, the holders of Permitted Additional Pari Passu Obligations) to purchase Notes (and such Permitted Additional Pari Passu Obligations) pursuant to and subject to the conditions contained in this Indenture (each, an "*Asset Sale Offer*"); *provided, however*, that in connection with any prepayment, repayment or purchase of Debt pursuant to this clause (ii), the Issuer or such Restricted Subsidiary shall permanently retire such Debt and shall cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid or purchased; *provided further* that if the Issuer or such Restricted Subsidiary shall so reduce any Permitted Additional Pari Passu Obligations, the Issuer will equally and ratably

reduce Debt under the Notes by making an offer to all Holders of Notes to purchase at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest, the pro rata principal amount of the Notes, such offer to be conducted in accordance with the procedures set forth below for an Asset Sale Offer but without any further limitation in amount; or

(iii) to an investment in (a) any one or more businesses; *provided* that such investment in any business is in the form of the acquisition of Capital Interests and results in the Issuer or a Restricted Subsidiary, as the case may be, owning an amount of the Capital Interests of such business such that it constitutes a Restricted Subsidiary, (b) properties, (c) capital expenditures or (d) other assets that, in each of (a), (b), (c) and (d), replace the businesses, properties and assets that are the subject of such Asset Sale or are used or useful in a Permitted Business (clauses (a), (b), (c) and (d) together, the “*Additional Assets*”); *provided* that to the extent that the assets that were subject to the Asset Sale constituted Collateral, such Additional Assets shall also constitute Collateral; *provided, further*, that the Issuer or such Restricted Subsidiary, as the case may be, promptly takes such action (if any) as may be required to cause that portion of such investment constituting Collateral to be added to the Collateral securing the Notes.

Any Net Cash Proceeds from the Asset Sales covered by this clause (a) that are not invested or applied as provided and within the time period set forth in the preceding paragraph will be deemed to constitute “*Excess Proceeds*.” Within 15 business days after the aggregate amount of Excess Proceeds exceeds \$15.0 million, the Issuer shall make an Asset Sale Offer to all holders of the Notes, and, if required by the terms of any Permitted Additional Pari Passu Obligations, to the holders of such Permitted Additional Pari Passu Obligations, to purchase the maximum principal amount of Notes and such Permitted Additional Pari Passu Obligations that is \$2,000 or an integral multiple of \$1,000 in excess thereof that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture. To the extent that the aggregate amount of Notes and such Permitted Additional Pari Passu Obligations tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes or the Permitted Additional Pari Passu Obligations surrendered by such holders thereof exceeds the amount of Excess Proceeds, the Issuer shall select the Notes and such Permitted Additional Pari Passu Obligations to be purchased on a pro rata basis based on the accreted value or principal amount of the Notes or such Permitted Additional Pari Passu Obligations tendered. Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. After the Issuer or any Restricted Subsidiary has applied the Net Cash Proceeds from any Asset Sale of any Collateral as *provided* in, and within the time periods required by, this paragraph (a), the balance of such Net Cash Proceeds, if any, from such Asset Sale of Collateral shall be released by the Collateral Agent to the Issuer or such Restricted Subsidiary for use by the Issuer or such Restricted Subsidiary for any purpose not prohibited by the terms of this Indenture.

(b) For purposes of this Section 4.10, the following are deemed to be cash or Eligible Cash Equivalents:

(1) any liabilities (as shown on the Issuer’s, or such Restricted Subsidiary’s, most recent balance sheet or in the notes thereto) of the Issuer or any Restricted Subsidiary that are assumed by the transferee of any such assets and for which the Issuer and all Restricted Subsidiaries have been validly released by all creditors in writing; and

(2) any securities received by the Issuer, a Guarantor or such Restricted Subsidiary from such transferee that are converted by the Issuer or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of such Asset Sale.

The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Offer to Purchase. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of this Indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Asset Sale provisions of this Indenture by virtue of such compliance.

SECTION 4.11 Limitation on Transactions with Affiliates.

The Issuer will not, and will not permit any of the Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of related transactions, contract, agreement, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer (each of the foregoing, an “*Affiliate Transaction*”), unless:

- (i) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer, taken as a whole, or the relevant Restricted Subsidiary than those that could reasonably have been obtained in a comparable arm’s-length transaction by the Issuer or such Restricted Subsidiary with an unaffiliated party; and
- (ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$5.0 million, the Issuer delivers to the Trustee a resolution adopted in good faith by the majority of the Board of Directors of the Issuer approving such Affiliate Transaction and set forth in an Officers’ Certificate certifying that such Affiliate Transaction complies with clause (i) above; and
- (iii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$15.0 million, the Issuer must obtain and deliver to the Trustee a written opinion of a nationally recognized investment banking, accounting or appraisal firm (an “*Independent Financial Advisor*”) stating that the transaction is fair to the Issuer or such Restricted Subsidiary, as the case may be, from a financial point of view.

The foregoing limitation does not limit, and shall not apply to:

- (1) Restricted Payments that are permitted by the provisions of this Indenture pursuant to Section 4.7 or Permitted Investments;
- (2) the payment of reasonable and customary fees and indemnities to members of the Board of Directors of the Issuer or a Restricted Subsidiary;
- (3) the payment (and any agreement, plan or arrangement relating thereto) of reasonable and customary compensation and other benefits (including retirement, health, option, deferred compensation and other benefit plans) and indemnities to officers and employees of the Issuer or any Restricted Subsidiary;
- (4) transactions between or among the Issuer and/or the Restricted Subsidiaries;
- (5) the issuance of Capital Interests (other than Redeemable Capital Interests) of the Issuer otherwise permitted hereunder and the granting of registration and other customary rights in connection therewith;
- (6) any agreement or arrangement as in effect on the Issue Date and any amendment, extension or modification thereto so long as such amendment, extension or modification is not more disadvantageous to the Holders of the Notes in any material respect;
- (7) any agreement between any Person and an Affiliate of such Person existing at the time such Person is acquired by or merged into the Issuer or a Restricted Subsidiary; *provided* that such agreement was not entered into in contemplation of such acquisition or merger, or any amendment thereto (so long as any such amendment is not disadvantageous to the Holders in the good faith judgment of the board of directors of the Issuer when taken as a whole as compared to the applicable agreement as in effect on the date of such acquisition or merger);

(8) transactions in which the Issuer delivers to the Trustee a written opinion from an Independent Financial Advisor to the effect that the transaction is fair, from a financial point of view, to the Issuer and any relevant Restricted Subsidiaries;

(9) any contribution of capital to the Issuer;

(10) the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders agreement (including any registration rights agreement) to which it is a party as of the Issue Date and any similar agreements which it may enter into thereafter; *provided, however*, that the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of obligations under, any future amendment to any such existing agreement or any similar agreement entered into after the Issue Date shall only be permitted by this clause (10) to the extent that the terms of any such amendment or new agreement are not otherwise disadvantageous in any material respect to the Holders when taken as a whole as compared to the original agreement in effect on the Issue Date; and

(11) (i) the Burger King Acquisition Agreement, the Burger King Operating Agreement and any ancillary agreements contemplated therewith, consistent in all material respects with the description thereof in the Offering Memorandum, together with any changes, additions, modifications or amendments thereto as are not, taken as a whole, materially more disadvantageous to the Issuer or Holders and (ii) transactions with Burger King Corporation in the ordinary course of business and otherwise in compliance with the terms of this Indenture which, in the good faith determination of the Issuer, are fair to the Issuer and its Restricted Subsidiaries or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party; and

(12) the payment of all fees and expenses related to the Transactions.

#### SECTION 4.12 Limitation on Liens.

(a) The Issuer will not, and will not permit any of the Restricted Subsidiaries, directly or indirectly, to enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to the Collateral except Permitted Collateral Liens.

(b) Subject to paragraph (a) of this Section 4.12, the Issuer will not, and will not permit any of the Restricted Subsidiaries, directly or indirectly, to enter into, create, incur, assume or suffer to exist any Liens of any kind, other than Permitted Liens, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom other than the Collateral without securing the Notes and all other amounts due under this Indenture and the Security Documents (for so long as such Lien exists) equally and ratably with (or prior to) the obligation or liability secured by such Lien.

#### SECTION 4.13 Maintenance of Property and Insurance.

Subject to and in compliance with the provisions of Article X and the provisions of the applicable Security Documents, all property (including equipment) material to, and used or useful in the conduct of the business of the Issuer and its Restricted Subsidiaries, taken as whole, shall be maintained and kept in good operating condition and working order (ordinary wear and tear and casualty loss excepted), and the Issuer and its Restricted Subsidiaries shall make any repairs, replacements and improvements thereto as they determine to be reasonable and prudent; *provided* that the Issuer and its Restricted Subsidiaries shall not be obligated to comply with the foregoing provisions of this Section 4.13 to the extent that the Issuer's management determines that the maintenance and repair of such property is no longer in the best interests of the Issuer and its Restricted Subsidiaries taken as a whole.

The Issuer will provide or cause to be provided, for itself and its Restricted Subsidiaries, insurance (including appropriate self-insurance) on its and its Subsidiaries business and the Collateral, with recognized, financially sound insurers or with the government of the United States of America, or an agency or instrumentality thereof, in such amounts, with such deductibles and by such methods as are determined by the Issuer in good faith to be reasonable and prudent.

#### SECTION 4.14 Offer to Purchase upon Change of Control.

Upon the occurrence of a Change of Control, each Holder of Notes will have the right to require the Issuer to repurchase all or any part of the outstanding Notes at a Purchase Price in cash equal to 101% of the principal amount tendered, together with accrued interest, if any, to but not including the Purchase Date pursuant to an Offer to Purchase (the “*Change of Control Payment*”). For purposes of the foregoing, an Offer to Purchase shall be deemed to have been made if (i) within 60 days following the date of the consummation of a transaction or series of transactions that constitutes a Change of Control, the Issuer commences an Offer to Purchase all outstanding Notes at the Purchase Price and (ii) all Notes properly tendered pursuant to the Offer to Purchase are purchased on the terms of such Offer to Purchase.

On the Purchase Date, the Issuer shall, to the extent lawful, (a) accept for payment all Notes or portions thereof properly tendered pursuant to the Offer to Purchase, (b) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions thereof so tendered and (c) otherwise comply with Section 3.9.

The Change of Control provisions described above will be applicable whether or not any other provisions of this Indenture are applicable.

The Issuer will not be required to make an Offer to Purchase upon a Change of Control if (i) a third party makes such Offer to Purchase contemporaneously with or upon a Change of Control in the manner, at the times and otherwise in compliance with the requirements set forth herein applicable to an Offer to Purchase made by the Issuer and purchases all Notes validly tendered and not withdrawn under such Offer to Purchase or (ii) a notice of redemption has been given pursuant to Section 3.7(a) or Section 3.7(b).

To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of this Indenture, the Issuer will comply with Rule 14e-1 under the Exchange Act and any other applicable securities laws and regulations and no Default or Event of Default shall be deemed to have occurred as a result of such compliance.

In addition, an Offer to Purchase may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making the Offer to Purchase.

#### SECTION 4.15 Corporate Existence.

Except as permitted by Section 11.5 and Article V hereof, as the case may be, the Issuer shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate, partnership, limited liability company or other existence of each of its Restricted Subsidiaries in accordance with the respective organizational documents (as the same may be amended from time to time) of the Issuer or any such Restricted Subsidiary; *provided* that the Issuer shall not be required to preserve the corporate, partnership or other existence of any of its Subsidiaries to the extent that the Issuer’s management determines that the preservation thereof is no longer in the best interests of the Issuer and its Restricted Subsidiaries taken as a whole.

#### SECTION 4.16 Limitation on Business Activities.

The Issuer will not, and will not permit any Restricted Subsidiary to, engage in any business other than a Permitted Business.

#### SECTION 4.17 Additional Note Guarantees.

After the Issue Date, the Issuer will cause each of the Restricted Subsidiaries (other than (x) any Foreign Subsidiary and (y) any Restricted Subsidiary that is prohibited by law from guaranteeing the Notes or that would experience adverse regulatory consequences as a result of providing a guarantee of the Notes (so long as, in the case of this clause (y), such Restricted Subsidiary has not provided a guarantee of any other Debt of the Issuer or any of the Guarantors)) to guarantee the Notes and the Issuer’s other obligations under this Indenture.

Subject to Section 4.19, such Guarantor will within thirty (30) days of becoming such Restricted Subsidiary enter into a joinder agreement to the applicable Security Documents or new Security Documents defining the terms of the security interests that secure payment and performance when due of the Notes and take all actions advisable in the opinion of the Issuer, as set forth in an Officers' Certificate accompanied by an Opinion of Counsel to the Issuer to cause the Liens created by the Security Documents to be duly perfected to the extent required by such documents in accordance with all applicable law, including the filing of financing statements in the jurisdictions of incorporation or formation of the Issuer and the Guarantors. The Issuer shall also deliver an Opinion of Counsel satisfactory to the Trustee. The Note Guarantees will be released as set forth in Article XI.

#### SECTION 4.18 Limitation on Creation of Unrestricted Subsidiaries.

The Issuer may designate any Subsidiary of the Issuer to be an "Unrestricted Subsidiary" as provided below, in which event such Subsidiary and each other Person that is a Subsidiary of such Subsidiary will be deemed to be an Unrestricted Subsidiary.

The Issuer may designate any Subsidiary (including any newly formed or newly acquired Subsidiary) of the Issuer as an Unrestricted Subsidiary under this Indenture (a "*Designation*") only if:

(1) no Default shall be continuing after giving effect to such Designation; and

(2) the Issuer would be permitted to make, at the time of such Designation, (i) a Permitted Investment or (ii) an Investment pursuant to the first paragraph of Section 4.7, in either case, in an amount (the "*Designation Amount*") equal to the Fair Market Value of the Issuer's proportionate interest in such Subsidiary on such date.

No Subsidiary shall be Designated as an Unrestricted Subsidiary unless such Subsidiary:

(1) to the extent the Debt of the Subsidiary is not Non-Recourse Debt, any guarantee or other credit support thereof by the Issuer or a Restricted Subsidiary is permitted under Section 4.9

(2) is a Person with respect to which neither the Issuer nor any Restricted Subsidiary has any direct or indirect obligation (a) to subscribe for additional Capital Interests or (b) to maintain or preserve the Person's financial condition or to cause the Person to achieve any specified levels of operating results, unless such obligation is a Permitted Investment or is otherwise permitted under Section 4.7.

If, at any time, any Unrestricted Subsidiary fails to meet the preceding requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Debt of the Subsidiary and any Liens on assets of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary as of the date and, if the Debt is not permitted to be incurred under Section 4.9, or the Lien is not permitted under Section 4.12, the Issuer shall be in default of the applicable covenant.

An Unrestricted Subsidiary may be designated as a Restricted Subsidiary if (i) all the Debt of such Unrestricted Subsidiary could be Incurred in accordance with under Section 4.9 and (ii) all the Liens on the property and assets of such Unrestricted Subsidiary could be incurred pursuant to Section 4.12.

All Designations must be evidenced by an Officers' Certificate delivered to the Trustee certifying compliance with the foregoing provisions.

#### SECTION 4.19 Further Assurances.

Upon the acquisition by the Issuer or any Guarantor after the Issue Date of (1) any after-acquired assets, including, but not limited to, any after-acquired Real Property or any equipment or fixtures which constitute accretions,

additions or technological upgrades to the equipment or fixtures or any working capital assets that, in any such case, form part of the Collateral, or (2) any replacement assets in compliance with Section 4.10, the Issuer or such Guarantor shall execute and deliver, (i) with regard to any Real Property that is acquired for the purpose of serving as a restaurant, mortgages and related documentation and opinions specified in this Indenture within 365 days of the date of acquisition, (ii) with regard to any other Real Property, mortgages and related documentation and opinions as specified in this Indenture within 180 days of the date of acquisition (or such later date as any applicable regulatory approvals have been obtained) and (iii) to the extent required by the Security Documents, any information, documentation, financing statements or other certificates as may be necessary to vest in the Collateral Agent a perfected security interest, subject only to Permitted Liens and the Burger King Rights, in such after-acquired Property (other than Excluded Property (as defined in the Security Agreement) and Collateral that the Issuer or such Guarantor is not required under the Security Documents to take actions to perfect) and to have such after-acquired Property added to the Collateral, and thereupon all provisions of this Indenture, the Security Documents and the Intercreditor Agreement relating to the Collateral shall be deemed to relate to such after-acquired Property to the same extent and with the same force and effect.

#### SECTION 4.20 Additional Interest Notice.

In the event that the Company is required to pay Additional Interest to holders of Notes pursuant to the Registration Rights Agreement, the Company will provide written notice ("Additional Interest Notice") to the Trustee of its obligation to pay Additional Interest no later than five days prior to the proposed payment date for the Additional Interest, and the Additional Interest Notice shall set forth the amount of Additional Interest to be paid by the Company on such payment date. The Trustee shall not at any time be under any duty or responsibility to any holder of Notes to determine the Additional Interest, or with respect to the nature, extent, or calculation of the amount of Additional Interest owed, or with respect to the method employed in such calculation of the Additional Interest.

### ARTICLE V

#### SUCCESSORS

##### SECTION 5.1 Consolidation, Merger, Conveyance, Transfer or Lease.

The Issuer will not, in any transaction or series of transactions, consolidate with or merge into any other Person (other than a merger of a Restricted Subsidiary into the Issuer in which the Issuer is the continuing Person), or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of the assets of the Issuer and its Subsidiaries (determined on a consolidated basis), taken as a whole, to any other Person, unless:

(i) either: (a) the Issuer shall be the continuing Person or (b) the Person (if other than the Issuer) formed by such consolidation or into which the Issuer is merged, or the Person that acquires, by sale, assignment, conveyance, transfer, lease or other disposition, all or substantially all of the property and assets of the Issuer (such Person, the "*Surviving Entity*"), (1) shall be a corporation, partnership, limited liability company or similar entity organized and validly existing under the laws of the United States, any political subdivision thereof or any state thereof or the District of Columbia, (2) shall expressly assume, by a supplemental indenture, the due and punctual payment of all amounts due in respect of the principal of (and premium, if any) and interest on all the Notes and the performance of the covenants and obligations of the Issuer under this Indenture and (3) shall expressly assume the due and punctual performance of the covenants and obligations of the Issuer under the Security Documents; *provided, however,* that the Issuer may not consolidate or merge with or into any Person other than a corporation satisfying such requirement;

(ii) immediately after giving effect to such transaction or series of transactions on a *pro forma* basis (including, without limitation, any Debt Incurred in connection with or in respect of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(iii) in the case of a transaction involving the Issuer, immediately after giving effect to any such transaction or series of transactions on a *pro forma* basis (including, without limitation, any Debt Incurred or anticipated to be Incurred in connection with or in respect of such transaction or series of transactions)

as if such transaction or series of transactions had occurred on the first day of the determination period, the Issuer (or the Surviving Entity if the Issuer is not the continuing Person), could Incur \$1.00 of additional Debt (other than Permitted Debt) under Section 4.9(a);

(iv) the Issuer delivers, or causes to be delivered, to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, assignment, transfer, lease or other disposition complies with the requirements of this Indenture;

(v) the Surviving Entity causes such amendments, supplements or other instruments to be executed, delivered, filed and recorded, as applicable, in such jurisdictions as may be required by applicable law to preserve and protect the Lien of the Security Documents on the Collateral owned by or transferred to the Surviving Entity;

(vi) the Collateral owned by or transferred to the Surviving Entity shall (a) continue to constitute Collateral under this Indenture and the Security Documents, (b) be subject to the Lien in favor of the Collateral Agent for the benefit of the Trustee and the Holders of the Notes and (c) not be subject to any Lien other than Permitted Collateral Liens; and

(vii) the property and assets of the Person which is merged or consolidated with or into the Surviving Entity, to the extent that they are property or assets of the types which would constitute Collateral under the Security Documents, shall be treated as after-acquired property and the Surviving Entity shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the Security Documents in the manner and to the extent required in this Indenture.

The preceding clause (iii) will not prohibit:

(a) a merger between the Issuer and a Restricted Subsidiary; or

(b) a merger between the Issuer and an Affiliate incorporated solely for the purpose of converting the Issuer into a corporation organized under the laws of the United States or any political subdivision or state thereof;

so long as, in each case, the amount of Debt of the Issuer and the Restricted Subsidiaries is not increased thereby, except for Debt incurred in the ordinary course of business to pay fees, expenses and other costs associated with such transaction.

#### SECTION 5.2 Successor Person Substituted.

Upon any transaction or series of transactions that are of the type described in, and are effected in accordance with, conditions described in Section 5.1, the Surviving Entity shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such Surviving Entity had been named as the Issuer herein, as applicable; and when a Surviving Entity duly assumes all of the obligations and covenants of the Issuer pursuant to this Indenture and the Notes, except in the case of a lease, the predecessor Person shall be relieved of all such obligations.

### ARTICLE VI

#### DEFAULTS AND REMEDIES

##### SECTION 6.1 Events of Default.

Each of the following constitutes an "*Event of Default*":

(1) default in the payment in respect of the principal of (or premium, if any, on) any Note at its maturity (whether at Stated Maturity or upon repurchase, acceleration, optional redemption or otherwise);

(2) default in the payment of any interest upon any Note when it becomes due and payable, and continuance of such default for a period of 30 days;

(3) failure by the Issuer to accept and pay for Notes tendered when and as required pursuant to an Offer to Purchase made pursuant to Section 4.14;

(4) except as permitted by this Indenture, (i) any Note Guarantee of any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary) shall for any reason cease to be in full force and effect and enforceable in accordance with its terms (except as specifically provided in this Indenture) for a period of 30 days after written notice thereof by the Trustee or the Holders of at least 25% in principal amount of the outstanding Notes or (ii) the Note Guarantee of any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary) shall for any reason be asserted by any of the Guarantors or the Issuer not to be in full force and effect and enforceable in accordance with its terms;

(5) default in the performance, or breach, of any covenant or agreement of the Issuer or any Guarantor in this Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (1), (2), (3) or (4) above), and continuance of such default or breach for a period of 60 days after written notice thereof has been given to the Issuer by the Trustee or to the Issuer and the Trustee by the Holders of at least 25% in aggregate principal amount of the outstanding Notes;

(6) a default or defaults under any bonds, debentures, notes or other evidences of Debt (other than the Notes) by the Issuer or any Restricted Subsidiary having, individually or in the aggregate, a principal or similar amount outstanding of at least \$15.0 million, whether such Debt now exists or shall hereafter be created, which default or defaults shall have resulted in the acceleration of the maturity of such Debt prior to its express maturity or shall constitute a failure to pay at least \$15.0 million of the principal amount of such Debt when due and payable after the expiration of any applicable grace period with respect thereto;

(7) the entry against the Issuer or any Restricted Subsidiary that is a Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary) of a final judgment or final judgments for the payment of money in an aggregate amount in excess of \$15.0 million and not covered by insurance (not disputed), by a court or courts of competent jurisdiction, which judgments remain undischarged, unwaived, unstayed, unbonded or unsatisfied for a period of 60 consecutive days;

(8) (i) the Issuer, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(a) commences a voluntary case,

(b) consents to the entry of an order for relief against it in an involuntary case,

(c) consents to the appointment of a Custodian of it or for all or substantially all of its property,

(d) makes a general assignment for the benefit of its creditors, or

(e) admits, in writing, its inability generally to pay its debts as they become due;

(ii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(a) is for relief against the Issuer or any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, in an involuntary case;

(b) appoints a Custodian of the Issuer or any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary or for all or substantially all of the property of the Issuer or any of the Restricted Subsidiaries; or

(c) orders the liquidation of the Issuer or any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary

and the order or decree remains unstayed and in effect for 60 consecutive days; or

(9) (x) with respect to any Collateral having a fair market value in excess of \$15.0 million, individually or in the aggregate, (a) any default or breach by the Issuer or any Guarantor in the performance of its obligations under the Security Documents or this Indenture which adversely affects the condition or value of such Collateral or the enforceability, validity, perfection or priority of the Liens in such Collateral, in each case taken as a whole in any material respect, and continuance of such default or breach for a period of 60 days after written notice thereof by the Trustee or the Holders of at least 25% in principal amount of the outstanding Notes, or (b) any security interest created under the Security Documents or under this Indenture is declared invalid or unenforceable by a court of competent jurisdiction or (y) the Issuer or any of the Guarantors asserts, in any pleading in any court of competent jurisdiction, that any security interest in any Collateral is invalid or unenforceable.

The term “Custodian” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

The Trustee shall not be deemed to have notice of any Event of Default and shall not have any duty or responsibility in respect thereof unless and until a Responsible Officer of the Trustee has received written notice of such Event of Default or has actual knowledge of such Event of Default. Delivery of reports, information and documents to the Trustee under Section 4.3 is for informational purposes only and the Trustee’s receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer’s compliance with any of its covenants hereunder or the existence of an Event of Default (as to which the Trustee is entitled to rely exclusively on Officers’ Certificates, except as otherwise provided herein).

#### SECTION 6.2 Acceleration.

If an Event of Default (other than an Event of Default specified in clause (8) of Section 6.1 with respect to the Issuer) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate principal amount of the outstanding Notes may declare the principal of the Notes and any accrued interest on the Notes to be due and payable immediately by a notice in writing to the Issuer (and to the Trustee if given by Holders); *provided, however*, that after such acceleration, but before a judgment or decree based on acceleration, the Holders of a majority in aggregate principal amount of the outstanding Notes may, under certain circumstances, rescind and annul such acceleration if all Events of Default, other than the nonpayment of accelerated principal of or interest on the Notes, have been cured or waived as provided in this Indenture.

In the event of a declaration of acceleration of the Notes solely because an Event of Default described in clause (6) of Section 6.1 has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically rescinded and annulled if the event of default or payment default triggering such Event of Default pursuant to clause (6) of Section 6.1 shall be remedied or cured by the Issuer or a Restricted Subsidiary or waived by the holders of the relevant Debt within 20 Business Days after the declaration of acceleration with respect thereto and if the rescission and annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction obtained by the Trustee for the payment of amounts due on the Notes.

If an Event of Default specified in clause (8) of Section 6.1 occurs with respect to the Issuer, the principal of and any accrued interest on the Notes then outstanding shall ipso facto become immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. The Trustee may withhold from Holders notice of any Default (except Default in payment of principal of, premium, if any, and interest) if the Trustee determines that withholding notice is in the interests of the Holders to do so.

#### SECTION 6.3 Other Remedies.

If an Event of Default occurs and is continuing, subject to the Intercreditor Agreement, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, interest on the Notes or to enforce the performance of any provision of the Notes, this Indenture and the Security Documents.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

#### SECTION 6.4 Waiver of Past Defaults.

The Holders of not less than a majority in aggregate principal amount of the outstanding Notes may on behalf of the Holders of all the Notes waive any past default under this Indenture and its consequences, except a default:

- (i) in any payment in respect of the principal of (or premium, if any) or interest on any Notes (including any Note which is required to have been purchased pursuant to an Offer to Purchase which has been made by the Issuer), or
- (ii) in respect of a covenant or provision hereof which under this Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected.

#### SECTION 6.5 Control by Majority.

Subject to the terms of the Security Documents and Section 7.2(f), the Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust power conferred on it. However, (i) the Trustee may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of other Holders or that may involve the Trustee in personal liability, and (ii) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

#### SECTION 6.6 Limitation on Suits.

A Holder may pursue a remedy with respect to this Indenture or the Notes only if:

- (a) the Holder gives to the Trustee written notice of a continuing Event of Default or the Trustee receives such notice from the Issuer;
- (b) the Holders of at least 25% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;
- (c) such Holder or Holders, provide to the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;
- (d) the Trustee does not comply with the request within 60 days after receipt of the request and the provision of such indemnity; and

(e) during such 60-day period the Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

#### SECTION 6.7 Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal, premium, if any, and interest on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

#### SECTION 6.8 Collection Suit by Trustee.

If an Event of Default specified in Section 6.1(1) or (2) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuer for the whole amount of principal of, premium and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

#### SECTION 6.9 Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Issuer (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other securities or property payable or deliverable upon the conversion or exchange of the Notes or on any such claims and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

#### SECTION 6.10 Priorities.

Subject to the terms of the Security Documents, any money collected by the Trustee (or received by the Trustee from the Collateral Agent under any Security Documents) pursuant to this Article VI and any money or other property distributable in respect of the Issuer's obligations under this Indenture after an Event of Default shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, if any, upon presentation of the Notes and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

First: to the Trustee (including any predecessor Trustee) and Collateral Agent, its agents and attorneys for amounts due under Section 7.7 hereof, including payment of all reasonable compensation, expense and liabilities incurred, and all advances made, by the Trustee or Collateral Agent and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest respectively; and

Third: to the Issuer or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

#### SECTION 6.11 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

### ARTICLE VII

#### TRUSTEE

#### SECTION 7.1 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and the Security Documents, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) Except during the continuance of an Event of Default:

(i) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall be under a duty to examine the certificates and opinions specifically required to be furnished to it to determine whether or not they conform on their face to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts or conclusions stated therein).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraphs (b) or (e) of this Section 7.1;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Trustee, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.5 hereof or otherwise in accordance with the direction of the Holders of a majority in principal amount of outstanding Notes relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee or the Collateral Agent, under this Indenture or the Security Documents.

(d) Whether or not therein expressly so provided, every provision of this Indenture or any provision of any Security Document that in any way relates to the Trustee or the Collateral Agent is subject to Sections 7.1 and 7.2 hereof.

(e) No provision of this Indenture or the Security Documents shall require the Trustee or the Collateral Agent to expend or risk its own funds or incur any liability. The Trustee and the Collateral Agent shall be under no obligation to exercise any of their rights and powers under this Indenture or the Security Documents at the request of any Holders, unless such Holder shall have offered to the Trustee and/or the Collateral Agent, as applicable, security and indemnity satisfactory to it against any loss, liability or expense which might be incurred by it in compliance with such request or direction.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

#### SECTION 7.2 Rights of Trustee.

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting on any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in any such document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel of the Trustee's own choosing and the Trustee shall be fully protected from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance on the advice or opinion of such counsel or on any Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture. Any request or direction of the Issuer mentioned herein shall be sufficiently evidenced by an Officers' Certificate and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution. Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer or a Guarantor shall be sufficient if signed by an Officer of the Issuer or such Guarantor.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee security and indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or documents, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine during normal business hours the books, records and premises of the Issuer or any Guarantor, personally or by agent or attorney at the sole cost of the Issuer, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) The rights, privileges, protections and benefits given to the Trustee, including its rights to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Persons employed to act hereunder or under any Security Document (including the Collateral Agent).

(i) The Trustee may request that the Issuer deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(j) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture.

(k) The permissive right of the Trustee to take or refrain from taking any actions enumerated in this Indenture or any Security Document shall not be construed as a duty.

#### SECTION 7.3 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer or any Affiliate of the Issuer with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

#### SECTION 7.4 Trustee's Disclaimer.

Neither the Trustee nor the Collateral Agent shall be responsible for or make any representation as to the validity or adequacy of this Indenture or the Notes, or the existence, genuineness, value or protection of any Collateral (except for the safe custody of Collateral in its possession actually received by it in accordance with the terms hereof) for the legality, effectiveness or sufficiency of any Security Document, or for the creation, perfection, priority, sufficiency or protection of any Lien in the Collateral, and neither shall be accountable for the Issuer's use of the proceeds from the Notes or any money paid to the Issuer or upon the Issuer's direction under any provision of this Indenture, neither shall be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes, any statement or recital in any document in connection with the sale of the Notes or pursuant to this Indenture other than the Trustee's certificate of authentication on the Notes.

#### SECTION 7.5 Notice of Defaults.

If a Default occurs and is continuing and if it is actually known to a Responsible Officer of the Trustee, the Trustee shall mail to Holders a notice of the Default within 90 days after knowledge by the Trustee. Except in the case of a Default in payment of principal of, premium, if any, or interest on any Note, the Trustee may withhold the notice if and so long as the Trustee in good faith determines that withholding the notice is in the interests of the Holders.

SECTION 7.6 Reports by Trustee to Holders of the Notes.

Within 60 days after each March 1 beginning with the March 1, 2013, and for so long as Notes remain outstanding, the Trustee shall mail to the Holders a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also shall comply with TIA § 313(b). The Trustee shall also transmit by mail all reports as required by TIA § 313(c).

SECTION 7.7 Compensation and Indemnity.

The Issuer and the Guarantors, jointly and severally, shall pay to the Trustee and the Collateral Agent from time to time such compensation for its acceptance of this Indenture and services hereunder as the Issuer and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Issuer and the Guarantors, jointly and severally, shall indemnify the Trustee and the Collateral Agent (which for purposes of this Section 7.7 shall include its officers, directors, stockholders, employees and agents) against any and all claims, damage, losses, liabilities or expenses including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Issuer (including this Section 7.7) and defending itself against any claim (whether asserted by the Issuer or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder except to the extent any such loss, claim, damage, liability or expense shall be determined to have been caused by its own negligence or willful misconduct. The Trustee (or the Collateral Agent, as the case may be) shall notify the Issuer promptly of any claim for which it may seek indemnity. Failure by the Trustee (or the Collateral Agent, as the case may be) to so notify the Issuer shall not relieve the Issuer of their obligations hereunder. The Issuer shall defend the claim and the Trustee (or the Collateral Agent, as the case may be) shall cooperate in the defense. The Trustee (or the Collateral Agent, as the case may be) may have one separate counsel, but at the Trustee's (or the Collateral Agent's, as the case may be) expense unless the named parties in any such proceeding (including impleaded parties) include both the Issuer and the Trustee (or the Collateral Agent, as the case may be) and in the reasonable judgment of the Trustee (or Collateral Agent, as the case may be) representation of both parties by the same counsel would be inappropriate due to actual or potential differing or conflicting interests between them. The Issuer need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

To secure the Issuer's and the Guarantors' obligations in this Section 7.7, the Trustee and the Collateral Agent shall have a Lien prior to the Notes on all money or property held or collected by the Trustee or the Collateral Agent, except that held in trust to pay principal or interest, if any, on particular Notes.

In addition, and without prejudice to the rights provided to the Trustee and the Collateral Agent under any of the provisions of this Indenture, when the Trustee or the Collateral Agent incurs expenses or renders services after an Event of Default specified in Section 6.1(8) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

"Trustee" for the purposes of this Section 7.7 shall include any predecessor Trustee and the Trustee in each of its capacities hereunder and each agent, custodian and other person employed to act hereunder or under any Security Document; *provided, however*, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

The Trustee shall comply with the provisions of TIA § 313(b)(2) to the extent applicable.

The provisions of this Section 7.7, including the obligations of the Issuer and the Guarantors hereunder, shall survive the satisfaction and discharge or termination for any reason of this Indenture or the resignation or removal of the Trustee or the Collateral Agent.

#### SECTION 7.8 Replacement of Trustee.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.8.

The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuer. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuer in writing. The Issuer may remove the Trustee if:

- (a) the Trustee fails to comply with Section 7.10 hereof;
- (b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a Custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuer shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuer.

If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and the duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to the Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, *provided* that all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.7 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.8, the Issuer's obligations under and the Lien provided for in Section 7.7 hereof shall continue for the benefit of the retiring Trustee.

#### SECTION 7.9 Successor Trustee by Merger, Etc.

If the Trustee or any Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another Person, the successor Person without any further act shall be the successor Trustee or any Agent, as applicable.

#### SECTION 7.10 Eligibility; Disqualification.

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trust power and that is subject to supervision or examination by federal or state authorities. The Trustee together with its Affiliates shall at all times have a combined capital surplus of at least \$50.0 million as set forth in its most recent annual report of condition.

This Indenture shall always have a Trustee who satisfies the requirements of TIA §§ 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b) including the provision in § 310(b)(1); *provided* that there shall be excluded from the operation of TIA § 310(b)(1) any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Issuer or the Guarantors are outstanding if the requirements for exclusion set forth in TIA § 310(b)(1) are met.

SECTION 7.11 Preferential Collection of Claims Against the Issuer.

The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

SECTION 7.12 Trustee's Application for Instructions from the Issuer.

Any application by the Trustee for written instructions from the Issuer may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than twenty Business Days after the date any officer of the Issuer actually receives such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

SECTION 7.13 Limitation of Liability.

In no event shall the Trustee, in its capacity as such or as Collateral Agent, Paying Agent or Registrar or in any other capacity hereunder, be liable for indirect, special or consequential losses or damages of any kind whatsoever, including but not limited to lost profits, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action. The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communication services; accidents; labor disputes; acts of civil or military authority and governmental action. The provisions of this Section 7.13 shall survive satisfaction and discharge or the termination for any reason of this Indenture and the resignation or removal of the Trustee.

SECTION 7.14 Collateral Agent.

The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Collateral Agent as if the Collateral Agent were named as the Trustee herein and the Security Documents were named as this Indenture herein.

SECTION 7.15 Co-Trustees; Separate Trustee; Collateral Agent.

At any time or times, for the purpose of meeting the legal requirements of any jurisdiction in which any of the Collateral may at the time be located, the Issuer, the Collateral Agent and the Trustee shall have power to appoint, and, upon the written request of (i) the Trustee or the Collateral Agent or (ii) the holders of at least 25% of the outstanding principal amount at maturity of the Notes, the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Trustee either to act as co-trustee, jointly with the Trustee, or to act as separate trustee, co-collateral agent, sub-collateral agent or separate collateral agent of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section 7.15.

If the Issuer does not join in such appointment within 15 days after the receipt by it of a request so to do, or in case an Event of Default has occurred and is continuing, the Trustee or the Collateral Agent alone shall have power to make such appointment.

Should any written instrument from the Issuer be requested by any co-trustee or separate trustee or co-collateral agent, sub-collateral agent or separate collateral agent so appointed for more fully confirming to such co-trustee or separate trustee such property, title, right or power, any and all such instruments shall, on request of such co-trustee or separate trustee or separate collateral agent, be executed, acknowledged and delivered by the Issuer.

Any co-trustee, separate trustee or co-collateral agent, sub-collateral agent or separate collateral agent shall agree in writing to be and shall be subject to the provisions of the applicable Security Documents as if it were the Trustee thereunder (and the Trustee shall continue to be so subject).

Every co-trustee or separate trustee or co-collateral agent, sub-collateral agent or separate collateral agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) The Notes shall be authenticated and delivered, and all rights, powers, duties and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee hereunder, shall be exercised solely, by the Trustee.

(b) The rights, powers, duties and obligations hereby conferred or imposed upon the Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed by the Trustee or by the Trustee and such co-trustee or separate trustee jointly, or by the Trustee and such co-collateral agent, sub-collateral agent or separate collateral agent jointly as shall be provided in the instrument appointing such co-trustee, separate trustee or separate collateral agent, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee, separate trustee or co-collateral agent, sub-collateral agent or separate collateral agent.

(c) The Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Issuer, may accept the resignation of or remove any co-trustee, separate trustee or co-collateral agent, sub-collateral agent or separate collateral agent appointed under this Section 7.15, and, in case an Event of Default has occurred and is continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee, separate trustee or co-collateral agent, sub-collateral agent or separate collateral agent without the concurrence of the Issuer. Upon the written request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee, separate trustee or co-collateral agent, sub-collateral agent or separate collateral agent so resigned or removed may be appointed in the manner provided in this Section 7.15.

(d) No co-trustee, separate trustee or co-collateral agent, sub-collateral agent or separate collateral agent hereunder shall be liable by reason of any act or omission of the Trustee, or any other such trustee, co-trustee, separate trustee, co-collateral agent, sub-collateral agent or separate collateral agent hereunder.

(e) The Trustee shall not be liable by reason of any act or omission of any co-trustee, separate trustee, co-collateral agent, sub-collateral agent or separate collateral agent.

(f) Any act of holders delivered to the Trustee shall be deemed to have been delivered to each such co-trustee, separate trustee or co-collateral agent, sub-collateral agent or separate collateral agent, as the case may be.

SECTION 7.16 Limitation on Duty of Trustee and Collateral Agent in Respect of Collateral; Indemnification.

(a) Beyond the exercise of reasonable care in the custody thereof, neither the Trustee nor the Collateral Agent shall have any duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and neither the Trustee nor the Collateral Agent shall have any responsibility for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. Each of the Trustee and the Collateral Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property and neither the Trustee nor the Collateral Agent shall be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Trustee or the Collateral Agent in good faith.

(b) Neither the Trustee nor the Collateral Agent shall be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence, bad faith or willful misconduct on the part of the Trustee or the Collateral Agent, as the case may be, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of the Issuer or any Guarantor to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. Neither the Trustee nor the Collateral Agent shall have any duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture, the Pledge and Security Agreement, or any other Security Document by the Issuer, the Guarantors, the holders of any Permitted Additional Pari Passu Obligations or any other Person.

ARTICLE VIII

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

SECTION 8.1 Option to Effect Legal Defeasance or Covenant Defeasance.

The Issuer may, at the option of their Boards of Directors evidenced by a Board Resolution set forth in an Officers' Certificate, at any time, elect to have either Section 8.2 or 8.3 hereof applied to all outstanding Notes upon compliance with the conditions set forth below in this Article VIII.

SECTION 8.2 Legal Defeasance.

Upon the Issuer's exercise under Section 8.1 hereof of the option applicable to this Section 8.2, the Issuer shall, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Notes on the date the conditions set forth below are satisfied (hereinafter, "*legal defeasance*"). For this purpose, legal defeasance means that the Issuer shall be deemed to have paid and discharged the entire Debt represented by the outstanding Notes, which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.5 hereof and the other Sections of this Indenture referred to in (a) and (b) below, and to have satisfied all of its other obligations under such Notes and this Indenture (and the Trustee, on written demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, premium, if any, and interest, if any, on such Notes when such payments are due from the trust referred to in Section 8.4(l); (b) the Issuer's obligations with respect to such Notes under Sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.10 and 4.2 hereof; (c) the rights, powers, trusts, benefits and immunities of the Trustee, including under Section 7.7, 8.5 and 8.7 hereof and the Issuer's obligations in connection therewith; (d) the Issuer's rights pursuant to Section 3.7; and (e) the provisions of this Article VIII. Subject to compliance with this Article VIII, the Issuer may exercise its option under this Section 8.2 notwithstanding the prior exercise of its option under Section 8.3 hereof.

### SECTION 8.3 Covenant Defeasance.

Upon the Issuer's and the Guarantors, if applicable, exercise under Section 8.1 hereof of the option applicable to this Section 8.3, the Issuer and the Guarantors, if applicable, shall, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, be released from its obligations under the covenants contained in Sections 4.3, 4.4, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19 and 5.1 hereof with respect to the outstanding Notes on and after the date the conditions set forth below are satisfied (hereinafter, "*covenant defeasance*" and, together with legal defeasance, "*defeasance*"), and the Notes shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, covenant defeasance means that, with respect to the outstanding Notes, the Issuer or any of the Subsidiaries may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.1 hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Issuer's exercise under Section 8.1 hereof of the option applicable to this Section 8.3, subject to the satisfaction of the conditions set forth in Section 8.4 hereof, Sections 6.1(3), (4), (5), (6), (7) and (9) hereof shall not constitute Events of Default.

### SECTION 8.4 Conditions to Legal Defeasance or Covenant Defeasance.

The following shall be the conditions to the ability of the Issuer and the Guarantors to effect legal defeasance or covenant defeasance with respect to the outstanding Notes:

In order to exercise either legal defeasance or covenant defeasance:

(1) the Issuer must irrevocably have deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to the benefits of the Holders of such Notes: (A) money in an amount, or (B) U.S. government obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (C) a combination thereof, in each case sufficient without reinvestment, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee to pay and discharge, the entire indebtedness in respect of the principal of and premium, if any, and interest on such Notes on the Stated Maturity thereof or (if the Issuer has made irrevocable arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name and at the expense of the Issuer) the redemption date thereof, as the case may be, in accordance with the terms of this Indenture and such Notes;

(2) in the case of legal defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this Indenture, there has been a change in the applicable United States federal income tax law, in either case (A) or (B) to the effect that, and based thereon such opinion shall confirm that, the Holders of such Notes will not recognize gain or loss for United States federal income tax purposes as a result of the deposit, defeasance and discharge to be effected with respect to such Notes and will be subject to United States federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, defeasance and discharge were not to occur;

(3) in the case of covenant defeasance, the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such outstanding Notes will not recognize gain or loss for United States federal income tax purposes as a result of the deposit and covenant defeasance to be effected with respect to such Notes and will be subject to federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and covenant defeasance were not to occur;

(4) no Default or Event of Default with respect to the outstanding Notes shall have occurred and be continuing at the time of such deposit after giving effect thereto (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien to secure such borrowing);

(5) such legal defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, any material agreement or material instrument (other than this Indenture) to which the Issuer is a party or by which the Issuer is bound; and

(6) the Issuer shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent with respect to such legal defeasance or covenant defeasance have been complied with.

Notwithstanding the foregoing, the Opinion of Counsel required by clause (2) above with respect to a legal defeasance need not be delivered if all Notes not theretofore delivered to the Trustee for cancellation (x) have become due and payable, or (y) will become due and payable at Stated Maturity within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer.

#### SECTION 8.5 Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.

Subject to Section 8.6 hereof, all money and non-callable U.S. government obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.5, the "*Trustee*") pursuant to Section 8.4 hereof in respect of the outstanding Notes shall be held in trust, shall not be invested, and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer or any Subsidiary acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable U.S. government obligations deposited pursuant to Section 8.4 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Anything in this Article VIII to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time upon the written request of the Issuer and be relieved of all liability with respect to any money or non-callable U.S. government obligations held by it as provided in Section 8.4 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.4(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent legal defeasance or covenant defeasance.

#### SECTION 8.6 Repayment to Issuer.

Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of, premium, if any, or interest, if any, on any Note and remaining unclaimed for one year after such principal and premium, if any, or interest has become due and payable shall be paid to the Issuer on its written request or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such

repayment, may at the expense of the Issuer cause to be published once, in the *New York Times* and *The Wall Street Journal* (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining shall be repaid to the Issuer.

#### SECTION 8.7 Reinstatement.

If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable U.S. government obligations in accordance with Section 8.2 or 8.3 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the obligations of the Issuer under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.2 or 8.3 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.2 or 8.3 hereof, as the case may be; *provided, however*, that, if the Issuer makes any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

#### SECTION 8.8 Discharge.

The Issuer and the Guarantors may terminate the obligations under this Indenture and the Security Documents (a “*Discharge*”) when:

(1) either: (A) all Notes theretofore authenticated and delivered have been delivered to the Trustee for cancellation, or (B) all such Notes not theretofore delivered to the Trustee for cancellation (i) have become due and payable or (ii) will become due and payable within one year or are to be called for redemption within one year under irrevocable arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee funds in an amount sufficient to pay and discharge the entire indebtedness on the Notes, not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest to the Stated Maturity or date of redemption;

(2) the Issuer has paid or caused to be paid all other sums then due and payable under this Indenture by the Issuer;

(3) the deposit will not result in a breach or violation of, or constitute a default under, any other material instrument (other than this Indenture) to which the Issuer or any of the Guarantors is a party or by which the Issuer or any of the Guarantors is bound;

(4) the Issuer has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be; and

(5) the Issuer has delivered to the Trustee an Officers’ Certificate and an Opinion of Counsel reasonably acceptable to the Trustee, each stating that all conditions precedent under this Indenture relating to the Discharge and any redemption, if applicable, have been complied with.

### ARTICLE IX

#### AMENDMENT, SUPPLEMENT AND WAIVER

##### SECTION 9.1 Without Consent of Holders of the Notes.

Notwithstanding Section 9.2 of this Indenture, without the consent of any Holders, the Issuer, the Guarantors, the Trustee and the Collateral Agent, at any time and from time to time, may enter into one or more indentures supplemental to this Indenture, the Guarantees and the Security Documents for any of the following purposes:

(1) to evidence the succession of another Person to the Issuer or any of the Guarantors and the assumption by any such successor of the covenants of the Issuer or such Guarantor in this Indenture, the Guarantees, the Security Documents and the Notes;

- (2) to add to the covenants of the Issuer for the benefit of the Holders, or to surrender any right or power herein conferred upon the Issuer;
- (3) to add additional Events of Default;
- (4) to provide for uncertificated Notes in addition to or in place of the Certificated Notes;
- (5) to evidence and provide for the acceptance of appointment under this Indenture and the Security Documents by a successor Trustee or Collateral Agent;
- (6) to provide for or confirm the issuance of Additional Notes in accordance with the terms of this Indenture;
- (7) to add to the Collateral securing the Notes, to add a Guarantor or to release a Guarantor and Collateral in accordance with this Indenture;
- (8) to cure any ambiguity, defect, omission, mistake or inconsistency; *provided* that any such change shall not adversely affect the Holders;
- (9) to make any other provisions with respect to matters or questions arising under this Indenture; *provided* that such actions pursuant to this clause shall not adversely affect the interests of the Holders in any material respect, as determined in good faith by the Board of Directors of the Issuer;
- (10) to conform the text of this Indenture, the Security Documents or the Notes to any provision of the “Description of Notes” in the Offering Memorandum;
- (11) to mortgage, pledge, hypothecate or grant any other Lien in favor of the Collateral Agent for the benefit of the Trustee on behalf of the Holders of the Notes, as additional security for the payment and performance of all or any portion of the Obligations under this Indenture, the Notes and the Security Documents, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a Lien is required to be granted to or for the benefit of the Trustee or the Collateral Agent pursuant to this Indenture, any of the Security Documents or otherwise;
- (12) to provide for the release of Collateral from the Lien of this Indenture and the Security Documents or subordinate to such Lien when permitted or required by the Security Documents or this Indenture; or
- (13) to enter into or amend the Intercreditor Agreement and/or the Security Documents (or supplement the Intercreditor Agreement and/or the Security Documents) under circumstances provided therein including (x) if the Issuer incurs First Lien Obligations and/or Permitted Additional Pari Passu Obligations and (y) in connection with the refinancing of the Revolving Credit Agreement and to secure any Permitted Additional Pari Passu Obligations under the Security Documents and to appropriately include any of the foregoing in the Intercreditor Agreement and Security Documents.

#### SECTION 9.2 With Consent of Holders of Notes.

(a) With the consent of (i) the Holders of not less than a majority in aggregate principal amount of the outstanding Notes, the Issuer, the Guarantors and the Trustee may enter into an indenture or indentures supplemental to this Indenture (together with the other consents required thereby) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or the Notes or of modifying in any manner the rights of the Holders of the Notes under this Indenture, including the definitions herein, and (ii) the holders

of not less than a majority in aggregate principal amount of the outstanding Notes and the Permitted Additional Pari Passu Obligations, voting as one class, the Issuer, the Guarantors, the Trustee and the Collateral Agent may amend or otherwise modify in any manner the Security Documents or the obligations thereunder, including, without limitation, as to property that constitutes less than all or substantially all of the Collateral, release the Lien on such Collateral; *provided*, *however*, that no such supplemental indenture, modification or amendment shall, without the consent of the Holder of each outstanding Note affected thereby:

(1) change the Stated Maturity of any Note or of any installment of interest on any Note, or reduce the amount payable in respect of the principal thereof or the rate of interest thereon or any premium payable thereon, or reduce the amount that would be due and payable on acceleration of the maturity thereof, or change the place of payment where, or the coin or currency in which, any Note or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof, or change the date on which any Notes may be subject to redemption or reduce the Redemption Price therefor,

(2) reduce the percentage in aggregate principal amount of the outstanding Notes, the consent of whose Holders is required for any such supplemental indenture or amendment, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture,

(3) modify the obligations of the Issuer to make Offers to Purchase upon a Change of Control or from the Excess Proceeds of Asset Sales or Excess Proceeds from an Event of Loss if such modification was done after the occurrence of such Change of Control, or after the obligation to make an Asset Sale Offer has arisen, as applicable; *provided* that prior to the occurrence of a Change Control, the Holders of a majority in aggregate principal amount of the Notes then outstanding may waive the requirement to make or complete an Offer to Purchase,

(4) subordinate, in right of payment, the Notes to any other Debt of the Issuer,

(5) modify any of the provisions of this Section 9.2 or provisions of Section 6.4 of this Indenture relating to waivers of past payment defaults or the rights of Holders of Notes to receive payments of principal or premium, if any, on the Notes, except to increase any such percentage required for such actions or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Note affected thereby, or

(6) release any Guarantees required to be maintained under this Indenture (other than in accordance with the terms of this Indenture).

(b) In addition, any amendment to, or waiver of, the provisions of this Indenture or any Security Document that has the effect of releasing all or substantially all of the Collateral from the Liens securing the Notes other than in accordance with this Indenture and the Security Documents or modifying the Intercreditor Agreement in any manner adverse in any material respect to the Holders of the Notes will require the consent of the Holders of at least 66 <sup>2</sup>/<sub>3</sub>% in aggregate principal amount of the Notes (including, for the avoidance of doubt, Additional Notes) then outstanding, voting as one class.

#### SECTION 9.3 Revocation and Effect of Consents.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. When an amendment, supplement or waiver becomes effective in accordance with its terms, it thereafter binds every Holder.

The Issuer may, but shall not be obligated to, fix a record date for determining which Holders consent to such amendment, supplement or waiver. If the Issuer fixes a record date, the record date shall be fixed at (i) the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished for the Trustee prior to such solicitation pursuant to Section 2.5 hereof or (ii) such other date as the Issuer shall designate.

#### SECTION 9.4 Notation on or Exchange of Notes.

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuer in exchange for all Notes may issue and the Trustee shall authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

After any amendment, supplement or waiver becomes effective, the Issuer shall mail to Holders a notice briefly describing such amendment, supplement or waiver. The failure to give such notice shall not affect the validity and effect of such amendment, supplement or waiver.

#### SECTION 9.5 Trustee to Sign Amendments, Etc.

The Trustee shall sign any amended or supplemental indenture authorized pursuant to this Article IX if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Issuer and the Guarantors may not sign an amendment or supplemental indenture until their respective Boards of Directors approve it. In signing or refusing to sign any amendment or supplemental indenture the Trustee shall receive and (subject to Section 7.1 hereof) shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating that the execution of such amendment or supplemental indenture is authorized or permitted by this Indenture, that all conditions precedent thereto have been met or waived and that such amendment or supplemental indenture is not inconsistent herewith.

### ARTICLE X

#### SECURITY

##### SECTION 10.1 Security Documents; Additional Collateral.

(a) Security Documents. In order to secure the due and punctual payment of the Obligations, the Issuer, the Guarantors, the Collateral Agent and the other parties thereto have simultaneously with the execution of this Indenture entered or, in accordance with the provisions of Section 4.17, Section 4.19 and this Article X will enter into the Security Documents.

(b) Post-Closing Collateral. The Issuer and the Guarantors will take the actions required by Section 4.10 (Post-Closing Collateral Matters) of the Security Agreement.

##### SECTION 10.2 Recording, Registration and Opinions.

Any release of Collateral permitted or required by Section 10.3 hereof or the Security Documents will be deemed not to impair the Liens under this Indenture and the Security Documents in contravention thereof and any Person that is required to deliver a certificate or opinion under this Indenture or the Security Documents, shall be entitled to rely upon the foregoing as a basis for delivery of such certificate or opinion. The Trustee may, to the extent permitted by Sections 7.1 and 7.2 hereof, accept as conclusive evidence of compliance with the foregoing provisions the appropriate statements contained in such documents and opinion.

SECTION 10.3 Releases of Collateral.

The Liens securing the Notes and the Note Guarantees will, automatically and without the need for any further action by any Person be released:

(a) in whole or in part, with the consent of the requisite holders in accordance with Article IX, including consents obtained in connection with a tender offer or exchange offer for, or purchase of, Notes;

(b) in whole, upon:

(i) Discharge of this Indenture under Section 8.8 hereof; or

(ii) a legal defeasance or covenant defeasance of this Indenture under Article VIII hereof;

(iii) upon payment in full of principal, interest and all other Obligations on the Notes issued under this Indenture;

(c) in whole or in part and in accordance with the Intercreditor Agreement, in connection with a sale or other disposition of the Collateral

(i) in connection with an Enforcement Action (as defined in the Intercreditor Agreement) by the First Lien Agent;

(ii) any disposition of Collateral to a person other than the Issuer or a Guarantor permitted under the First Lien Documents as in effect on the Issue Date, other than in connection with a Discharge of First Lien Obligations or after and during the continuance of any Event of Default;

(iii) consented to by the First Lien Agent after the occurrence of an event of default under the First Lien Credit Documents in connection with good faith efforts by First Lien Agent to collect the First Lien Obligations through the disposition of Collateral with the net cash proceeds of such disposition being used to permanently retire First Lien Obligations and cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so repaid; provided that, in each case, the First Lien Agent has released its Liens on the applicable Collateral;

(d) in part, as to any asset constituting Collateral

(i) that is sold or otherwise disposed of by the Issuer or any of the Guarantors (other than any such sale to the Issuer or a Guarantor) in a transaction permitted under Section 4.10 and the Security Documents (to the extent of the interest sold or disposed of) or otherwise permitted by this Indenture and the Security Documents, if all other Liens on that asset securing the First Lien Obligations and any Permitted Additional Pari Passu Obligations then secured by that asset (including all commitments thereunder) are released (other than in connection with a Discharge of First Lien Obligations or after and during the continuance of an Event of Default);

(ii) that is cash withdrawn from deposit accounts for the benefit of a person other than the Issuer or a Guarantor for any purpose not prohibited under this Indenture or the Security Documents;

(iii) that is a Capital Interest of a Subsidiary of the Company to the extent necessary for such Subsidiary not to be subject to any requirement pursuant to Rule 3-16 or Rule 3-10 of Regulation S-X under the Exchange Act, due to the fact that such Subsidiary's Capital Interest secures the Notes or Guarantees, to file separate financial statements with the Commission (or any other governmental agency);

(iv) that is used to make a Restricted Payment or Permitted Investment permitted by this Indenture to the extent such Collateral is transferred to a person other than the Issuer or a Guarantor;

(v) that becomes Excluded Property (as defined in the Security Agreement); or

(vi) that is otherwise released in accordance with, and as expressly provided for in accordance with, this Indenture and the Security Documents.

#### SECTION 10.4 Form and Sufficiency of Release.

In the event that either the Issuer or any Guarantor has sold, exchanged, or otherwise disposed of or proposes to sell, exchange or otherwise dispose of any portion of the Collateral that, under the terms of this Indenture may be sold, exchanged or otherwise disposed of by the Issuer or any Guarantor, and the Issuer or such Guarantor requests the Trustee to furnish a written disclaimer, release or quitclaim of any interest in such property under this Indenture, the applicable Guarantee and the Security Documents, upon receipt of an Officers' Certificate and Opinion of Counsel to the effect that such release complies with Section 10.3 and specifying the provision in Section 10.3 pursuant to which such release is being made (upon which the Trustee may exclusively and conclusively rely), the Trustee shall execute, acknowledge and deliver to the Issuer or such Guarantor (or instruct the Collateral Agent to do the same) such an instrument in the form provided by the Issuer, and providing for release without recourse (other than with respect to Liens attributable to it) and shall take such other action as the Issuer or such Guarantor may reasonably request and as necessary to effect such release. Before executing, acknowledging or delivering any such instrument, the Trustee shall be furnished with an Officers' Certificate and an Opinion of Counsel (on which the Trustee shall be entitled to conclusively and exclusively rely) each stating that such release is authorized and permitted by the terms hereof and the Security Documents and that all conditions precedent with respect to such release have been complied with.

#### SECTION 10.5 Possession and Use of Collateral.

Subject to the provisions of the Security Documents, the Issuer and the Guarantors shall have the right to remain in possession and retain exclusive control of and to exercise all rights with respect to the Collateral (other than monies or U.S. government obligations deposited pursuant to Article VIII, and other than as set forth in the Security Documents and this Indenture), to operate, manage, develop, lease, use, consume and enjoy the Collateral (other than monies and U.S. government obligations deposited pursuant to Article VIII and other than as set forth in the Security Documents and this Indenture), to alter or repair any Collateral so long as such alterations and repairs do not impair the creation or perfection of the Lien of the Security Documents thereon, and to collect, receive, use, invest and dispose of the reversions, remainders, interest, rents, lease payments, issues, profits, revenues, proceeds and other income thereof.

#### SECTION 10.6 Purchaser Protected.

No purchaser or grantee of any property or rights purporting to be released shall be bound to ascertain the authority of the Trustee to execute the release or to inquire as to the existence of any conditions herein prescribed for the exercise of such authority so long as the conditions set forth in Section 10.4 have been satisfied.

#### SECTION 10.7 Authorization of Actions to Be Taken by the Collateral Agent Under the Security Documents.

In acting hereunder and under the Security Documents, the Holders, the Issuer and the Guarantors agree that the Collateral Agent shall be entitled to the rights, privileges, protections, immunities, indemnities and benefits provided to the Trustee hereunder as if such were provided to the Collateral Agent. Furthermore, each Holder of a Note, by accepting such Note, appoints The Bank of New York Mellon Trust Company, N.A. as its collateral agent, and consents to the terms of and authorizes and directs the Trustee (in each of its capacities) and the Collateral Agent to enter into and perform the Security Documents in each of its capacities thereunder.

SECTION 10.8 Authorization of Receipt of Funds by the Trustee Under the Security Agreement.

Subject to the terms of the Intercreditor Agreement, the Trustee is authorized to receive any funds for the benefit of Holders distributed under the Security Documents to the Trustee, to apply such funds as provided in this Indenture and the Security Documents.

SECTION 10.9 Powers Exercisable by Receiver or Collateral Agent.

In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article X upon the Issuer or any Guarantor, as applicable, with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or any Guarantor, as applicable, or of any officer or officers thereof required by the provisions of this Article X.

SECTION 10.10 Appointment and Authorization of The Bank of New York Mellon Trust Company, N.A. Trust as Collateral Agent.

(a) The Bank of New York Mellon Trust Company, N.A. is hereby designated and appointed as the Collateral Agent of the Holders under the Security Documents, and is authorized and directed as the Collateral Agent for such Holders to execute and enter into each of the Security Documents and all other instruments relating to the Security Documents and (i) to take action and exercise such powers as are expressly required or permitted hereunder and under the Security Documents and all instruments relating hereto and thereto and (ii) to exercise such powers and perform such duties as are in each case, expressly delegated to the Collateral Agent by the terms hereof and thereof together with such other powers as are reasonably incidental hereto and thereto.

(b) Notwithstanding any provision to the contrary elsewhere in this Indenture or the Security Documents, the Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein or therein or any fiduciary relationship with any Holder, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture or any Security Document or otherwise exist against the Collateral Agent.

(c) The Collateral Agent may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder or under the Security Documents in good faith and in accordance with the advice or opinion of such counsel.

ARTICLE XI

NOTE GUARANTEES

SECTION 11.1 Note Guarantees.

(a) Each Guarantor hereby jointly and severally, unconditionally and irrevocably guarantees the Notes and obligations of the Issuer hereunder and thereunder, and guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee on behalf of such Holder, that: (i) the principal of and premium, if any and interest on the Notes shall be paid in full when due, whether at Stated Maturity, by acceleration, call for redemption or otherwise (including the amount that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), together with interest on the overdue principal, if any, and interest on any overdue interest, to the extent lawful, and all other obligations of the Issuer to the Holders or the Trustee hereunder or thereunder shall be paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Notes or of any such other obligations, the same shall be paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise. Each of the Note Guarantees shall be a guarantee of payment and not of collection.

(b) Each Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor.

(c) Each Guarantor hereby waives the benefits of diligence, presentment, demand for payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer or any other Person, protest, notice and all demands whatsoever and covenants that the Note Guarantee of such Guarantor shall not be discharged as to any Note except by complete performance of the obligations contained in such Note and such Note Guarantee or as provided for in this Indenture. Each of the Guarantors hereby agrees that, in the event of a default in payment of principal or premium, if any or interest on such Note, whether at its Stated Maturity, by acceleration, call for redemption, purchase or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such Note, subject to the terms and conditions set forth in this Indenture, directly against each of the Guarantors to enforce such Guarantor's Note Guarantee without first proceeding against the Issuer or any other Guarantor. Each Guarantor agrees that if, after the occurrence and during the continuance of an Event of Default, the Trustee or any of the Holders are prevented by applicable law from exercising their respective rights to accelerate the maturity of the Notes, to collect interest on the Notes, or to enforce or exercise any other right or remedy with respect to the Notes, such Guarantor shall pay to the Trustee for the account of the Holders, upon demand therefor, the amount that would otherwise have been due and payable had such rights and remedies been permitted to be exercised by the Trustee or any of the Holders.

(d) If any Holder or the Trustee is required by any court or otherwise to return to the Issuer or any Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Issuer or any Guarantor, any amount paid by any of them to the Trustee or such Holder, the Note Guarantee of each of the Guarantors, to the extent theretofore discharged, shall be reinstated in full force and effect. This paragraph (d) shall remain effective notwithstanding any contrary action which may be taken by the Trustee or any Holder in reliance upon such amount required to be returned. This paragraph (d) shall survive the termination of this Indenture.

(e) Each Guarantor further agrees that, as between each Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article VI hereof for the purposes of the Note Guarantee of such Guarantor, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any acceleration of such obligations as provided in Article VI hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by each Guarantor for the purpose of the Note Guarantee of such Guarantor.

#### SECTION 11.2 Execution and Delivery of Note Guarantee.

To evidence its Note Guarantee set forth in Section 11.1, each Guarantor agrees that a notation of such Note Guarantee substantially in the form attached hereto as Exhibit B shall be endorsed on each Note authenticated and delivered by the Trustee. Such notation of Note Guarantee shall be signed on behalf of such Guarantor by an officer of such Guarantor (or, if an officer is not available, by a board member, director or member, as applicable) on behalf of such Guarantor by manual or facsimile signature. In case the officer, board member or director or member of such Guarantor who shall have signed such notation of Note Guarantee shall cease to be such Officer, board member, director or member before the Note on which such Note Guarantee is endorsed shall have been authenticated and delivered by the Trustee, such Note nevertheless may be authenticated and delivered as though the Person who signed such notation of Note Guarantee had not ceased to be such officer, board member, director or member.

Each Guarantor agrees that its Note Guarantee set forth in Section 11.1 shall remain in full force and effect and apply to all the Notes notwithstanding any failure to endorse on each Note a notation of such Note Guarantee. The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of any Note Guarantee set forth in this Indenture on behalf of the Guarantors.

The failure to endorse a Note Guarantee shall not affect or impair the validity thereof.

SECTION 11.3 Severability.

In case any provision of any Note Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 11.4 Limitation of Guarantors' Liability.

Each Guarantor and by its acceptance hereof each Holder confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law or the provisions of its local law relating to fraudulent transfer or conveyance. To effectuate the foregoing intention, the Trustee, the Holders and Guarantors hereby irrevocably agree that the obligations of such Guarantor under its Note Guarantee shall be limited to the maximum amount that will not, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Note Guarantee, result in the obligations of such Guarantor under its Note Guarantee constituting a fraudulent transfer or conveyance.

SECTION 11.5 Guarantors May Consolidate, Etc., on Certain Terms.

No Guarantor may sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person), another Person other than the Issuer or a Guarantor, unless:

(1) immediately after giving effect to such transactions no Default or Event of Default exists; and

(2) either:

(A) the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger assumes all the obligations of that Guarantor under this Indenture pursuant to a supplemental indenture; or

(B) the Net Cash Proceeds of any such sale or other disposition of a Guarantor are applied in accordance with the provisions of Section 4.10 hereof; and

(3) the Issuers deliver, or cause to be delivered, to the Trustee an Officers' Certificate (upon which the Trustee shall be entitled to conclusively and exclusively rely), stating that such sale, other disposition, consolidation or merger complies with the requirements of this Indenture.

Upon any transaction or series of transactions that are of the type described in, and are effected in accordance with, conditions described in the immediately preceding paragraph, the Surviving Entity shall succeed to, and be substituted for, and may exercise every right and power of, the Guarantors under this Indenture with the same effect as if such Surviving Entity had been named as a Guarantor herein, as applicable; and when a Surviving Entity duly assumes all of the obligations and covenants of the Guarantors pursuant to this Indenture and the Note Guarantees, except in the case of a lease, the predecessor Person shall be relieved of all such obligations.

Except as set forth in Articles IV and V hereof, nothing contained in this Indenture or in any of the Notes shall prevent any consolidation or merger of a Guarantor with or into the Issuer or another Guarantor, or shall prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Issuer or another Guarantor.

SECTION 11.6 Release of a Guarantor.

The Note Guarantee of a Guarantor will be automatically and unconditionally released:

- (a) in the event of a sale or other transfer (including by way of consolidation or merger) of Capital Interests in such Guarantor in compliance with Section 4.10 following which such Guarantor ceases to be a Subsidiary;
- (b) upon the designation of such Guarantor as an Unrestricted Subsidiary in compliance with Section 4.18;
- (c) upon a release of such Guarantor from its guarantee of, and all pledges and security interest, if any, granted under the Revolving Credit Agreement in connection with an enforcement action by the collateral agent under the Revolving Credit Agreement; provided that (x) prior to such release, such Guarantor is also a guarantor or borrower under the Revolving Credit Agreement and (y) after giving effect to such release, such Guarantor will not guarantee any indebtedness of the Issuer or any of its Restricted Subsidiaries;
- (d) in connection with a Discharge, legal defeasance or covenant defeasance in compliance with Article VIII.

Upon any release of a Guarantor from its Notes Guarantee, such Guarantor shall be automatically and unconditionally released from its obligations under the Security Documents.

SECTION 11.7 Benefits Acknowledged.

Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that its Notes guarantee and waivers pursuant to its Note Guarantee are knowingly made in contemplation of such benefits.

SECTION 11.8 Future Guarantors.

Each Person that is required to become a Guarantor after the Issue Date pursuant to Section 4.17 shall promptly (but no longer than thirty (30) days of becoming required to become a Guarantor) execute and deliver to the Trustee a supplemental indenture in the form of Exhibit E pursuant to which such Person shall become a Guarantor. Concurrently with the execution and delivery of such supplemental indenture, the Issuer shall deliver to the Trustee an Opinion of Counsel and an Officers' Certificate (upon which the Trustee shall be entitled to conclusively and exclusively rely) to the effect, subject to customary assumptions and qualifications, that such supplemental indenture has been duly authorized, executed and delivered by such Person and that, subject to the application of bankruptcy, insolvency, moratorium, fraudulent conveyance or transfer and other similar laws relating to creditors' rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, the Guarantee of such Guarantor is a legal, valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms and/or to such other matters as the Trustee may reasonably request.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1 Notices.

Any notice or communication by the Issuer, any Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telecopier, other electronic means or overnight air courier guaranteeing next day delivery, to the others address:

If to the Issuer or any Guarantor:

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, NY 13203  
Facsimile: 315-475-9616  
Attention: William E. Myers, Vice President and General Counsel

With a copy to:

Akerman Senterfitt LLP  
335 Madison Avenue, 26<sup>th</sup> floor  
New York, New York 10017  
Facsimile: 212-880-8965  
Attention: Wayne A. Wald, Esq.

If to the Trustee:

The Bank of New York Mellon Trust Company, N.A.  
525 William Penn Place, 38th Floor  
Pittsburgh, PA 15259  
Facsimile: (412) 234-7535  
Attention: Corporate Unit

The Issuer, the Guarantors and the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders and the Trustee) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if telecopied; and the next Business Day after timely delivery to the courier, if sent by overnight air courier promising next Business Day delivery. All notices and communications to the Trustee shall only be deemed to have been duly given upon receipt by a Responsible Officer of the Trustee.

Any notice or communication to a Holder shall be mailed by first class mail or by overnight air courier promising next Business Day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so mailed to any Person described in TIA § 313(c), to the extent such notice is required by the TIA or would be so required were the TIA applicable this Indenture. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed or delivered in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it, except in the case of notices or communications given to the Trustee, which shall be effective only upon actual receipt.

If the Issuer mails a notice or communication to Holders, they shall mail a copy to the Trustee and each Agent at the same time.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced on or before delivery of any such instructions or directions whenever a person is to be added or deleted from the listing. If the party elects to give the Trustee e-mail, pdf or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

**SECTION 12.2 Communication by Holders of Notes with Other Holders of Notes.**

Holders may communicate in accordance with TIA § 312(b) with other Holders with respect to their rights under this Indenture, the Security Documents or the Notes. The Issuer, the Guarantors, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

**SECTION 12.3 Certificate and Opinion as to Conditions Precedent.**

Upon any request or application by the Issuer to the Trustee to take any action under this Indenture, the Issuer shall furnish to the Trustee:

- (a) an Officers' Certificate (which shall include the statements set forth in Section 12.4 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and
- (b) an Opinion of Counsel (which shall include the statements set forth in Section 12.4 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

**SECTION 12.4 Statements Required in Certificate or Opinion.**

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (a) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been satisfied; and
- (d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

SECTION 12.5 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

SECTION 12.6 No Personal Liability of Directors, Officers, Employees and Stockholders.

No director, officer, employee, stockholder, general or limited partner or incorporator, past, present or future, of the Issuer or any of its Subsidiaries, as such or in such capacity, shall have any personal liability for any obligations of the Issuer under the Notes, any Note Guarantee or this Indenture by reason of his, her or its status as such director, officer, employee, stockholder, general or limited partner or incorporator. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

SECTION 12.7 Governing Law.

THE LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES, IF ANY. The parties to this Indenture each hereby irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan in The City of New York in any action or proceeding arising out of or relating to the Notes, the Note Guarantees or this Indenture, and all such parties hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such New York State or federal court and hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES, THE NOTE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 12.8 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 12.9 Successors.

All agreements of the Issuer and the Guarantors in this Indenture and the Notes and the Note Guarantees, as applicable, shall bind their respective successors and assigns. All agreements of the Trustee in this Indenture shall bind its successors and assigns.

SECTION 12.10 Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 12.11 Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 12.12 Table of Contents, Headings, Etc.

The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 12.13 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “*Act*” of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Section 12.13.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to such officer the execution thereof. Where such execution is by a signer acting in a capacity other than such signer’s individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer’s authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Holder list maintained under Section 2.5 hereunder.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Note.

(e) If the Issuer shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Issuer may, at its option, by or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Issuer shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Notes shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

SECTION 12.14 Intercreditor Agreement.

The Trustee, the Collateral Agent and the Holders are bound by the terms of the Intercreditor Agreement and the other Security Documents.

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SECTION 12.15 Patriot Act

The parties hereto acknowledge that in accordance with Section 326 of the USA Patriot Act, The Bank of New York Mellon Trust Company, N.A., like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account. The parties to this Agreement agree that they will provide The Bank of New York Mellon Trust Company, N.A. with such information as it may request in order for The Bank of New York Mellon Trust Company, N.A. to satisfy the requirements of the USA Patriot Act.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first above written.

CARROLS RESTAURANT GROUP, INC.

By: /s/ Paul R. Flanders  
Name: Paul R. Flanders  
Title: VP, CFO and Treasurer

CARROLS CORPORATION

By: /s/ Paul R. Flanders  
Name: Paul R. Flanders  
Title: VP, CFO and Treasurer

CARROLS LLC

By: /s/ Paul R. Flanders  
Name: Paul R. Flanders  
Title: VP, CFO and Treasurer

THE BANK OF NEW YORK MELLON TRUST COMPANY,  
N.A., as Trustee

By: /s/ Lawrence M. Kusch

Name: Lawrence M. Kusch

Title: Vice President

## FORM OF 11.25% SENIOR SECURED SECOND LIEN NOTE

(Face of 11.25% Senior Secured Second Lien Note)  
11.25% Senior Secured Second Lien Notes due 2018

## [Global Note Legend]

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. THIS NOTE IS NOT EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO CARROLS RESTAURANT GROUP, INC. OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTION 2.16 OF THE INDENTURE.

## [Restricted Note Legend]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO CARROLS RESTAURANT GROUP, INC. OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR (F) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE

SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) PURSUANT TO (C), (D) OR (E), THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE COMPANY SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. AS USED HEREIN, THE TERMS “OFFSHORE TRANSACTION,” “UNITED STATES” AND “U.S. PERSON” HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

11.25% SENIOR SECURED SECOND LIEN NOTE DUE 2018

No.

INITIAL NOTES CUSIP:

144A: 14574X AA2

Reg S: U14539 AA5

INITIAL NOTES ISIN:

144A: US14574XAA28

Reg S: USU14539AA51

Carrols Restaurant Group, Inc. promises to pay to Cede & Co. or registered assigns, the principal sum of [ ] (\$[ ]) on May 15, 2018.

Interest Payment Dates: May 15 and November 15, beginning [ ] [ ], 201[ ]

Record Dates: May 1 and November 1

Reference is made to further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Note shall not be entitled to any benefits under the Indenture referred to on the reverse hereof or be valid or obligatory for any purpose.

By: \_\_\_\_\_  
Name:  
Title:

TRUSTEE’S CERTIFICATE OF AUTHENTICATION

This is one of the 11.25% Senior Secured Second Lien Notes referred to in the within-mentioned Indenture:

Dated: [                    ] [    ], 201[    ]

THE BANK OF NEW YORK MELLON TRUST COMPANY,  
N.A.,  
not in its individual capacity, but solely as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Carrols Restaurant Group, Inc.

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) Interest.

(a) Carrols Restaurant Group, Inc., a Delaware corporation (the “*Issuer*”), promises to pay interest on the principal amount of this Note (the “*Notes*”) at the rate of 11.25% *per annum*. The Issuer will pay interest in United States dollars (except as otherwise provided herein) semiannually in arrears on May 15 and November 15, commencing on [ ] [ ], 201[ ], or if any such day is not a Business Day, on the next succeeding Business Day (each an “*Interest Payment Date*”). Interest on the Notes (including any Additional Interest, if any) shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from and including May 30, 2012. The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful. Interest shall be computed on the basis of a 360-day year comprised of twelve 30-day months. The interest rate on the Notes will in no event be higher than the maximum rate permitted by New York law as the same may be modified by United States law of general application.

(b) Registration Rights Agreement. The Holder of this Note is entitled to the benefits of a Registration Rights Agreement, dated as of May 30, 2012, among the Issuer, the Guarantors party thereto and the Initial Purchasers.<sup>1</sup>

(2) Method of Payment. The Issuer will pay interest on the Notes (except defaulted interest) on the applicable Interest Payment Date to the Persons who are registered Holders of Notes at the close of business on the May 1 and November 1 (whether or not a Business Day) preceding the Interest Payment Date, even if such Notes are cancelled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes shall be payable as to principal, premium and interest at the office or agency of the Issuer maintained for such purpose within or without The City and State of New York, or, at the option of the Issuer, payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders; *provided* that payment by wire transfer of immediately available funds shall be required with respect to principal of, premium, if any, and interest on, all Global Notes and all other Notes the Holders of which shall have provided written wire transfer instructions to the Issuer and the Paying Agent at least three Business Days prior to the date of any such payment. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

Any payments of principal of and interest on this Note prior to Stated Maturity shall be binding upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not noted hereon. The amount due and payable at the maturity of this Note shall be payable only upon presentation and surrender of this Note at an office of the Trustee or the Trustee’s agent appointed for such purposes.

<sup>1</sup> To be included only in the Initial Notes on the Issue Date and any Additional Notes that bear the Restricted Notes Legend.

(3) Paying Agent and Registrar. Initially, The Bank of New York Mellon Trust Company, N.A., the Trustee under the Indenture, shall act as Paying Agent and Registrar. The Issuer may change any Paying Agent or Registrar without notice to any Holder. The Issuer or any of the Restricted Subsidiaries may act in any such capacity.

(4) Indenture. The Issuer issued the Notes under an Indenture, dated as of May 30, 2012 (the “*Indenture*”), among the Issuer and the Trustee. The terms of the Notes include those stated in the Indenture and those made a part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (U.S. Code §§ 77aaa-77bbb) (the “*TIA*”). To the extent the provisions of this Note are inconsistent with the provisions of the Indenture, the Indenture shall govern. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. The Notes issued on the Issue Date are senior secured Obligations of the Issuer limited to \$150,000,000 in aggregate principal amount, plus amounts, if any, sufficient to pay premium and interest on outstanding Notes as set forth in Paragraph 2 hereof. The Indenture permits the issuance of Additional Notes subject to compliance with certain conditions.

The payment of principal and interest on the Notes is unconditionally guaranteed on a senior basis by the Guarantors.

(5) Optional Redemption.

(a) The Notes may be redeemed, in whole or in part, at any time prior to May 15, 2015, at the option of the Issuer upon not less than 30 nor more than 60 days’ prior notice mailed by first-class mail to each Holder’s registered address, at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to but not including, the applicable redemption date (subject to the right of Holders on the relevant record date to receive interest due on the relevant interest payment date).

(c) The Notes are subject to redemption, at the option of the Issuer, in whole or in part, at any time on or after May 15, 2015, upon not less than 30 nor more than 60 days’ notice at the Redemption Prices (expressed as percentages of the principal amount to be redeemed) set forth below, plus accrued and unpaid interest, if any, to, but not including, the redemption date (subject to the right of Holders on the relevant regular record date to receive interest due on an interest payment date), if redeemed during the 12-month period beginning on May 15 of the years indicated:

<u>Year</u>	<u>Percentage</u>
2015	105.625%
2016	102.813%
2017 and thereafter	100.00%

(d) Prior to May 15, 2015, the Issuer may, with the net proceeds of one or more Equity Offerings, redeem up to 35% of the aggregate principal amount of the outstanding Notes (including Additional Notes) at a Redemption Price equal to 111.250% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to but not including the date of redemption; *provided* that at least 65% of the principal amount of Notes then outstanding (including Additional Notes) remains outstanding immediately after the occurrence of any such redemption (excluding Notes held by the Issuer or its Subsidiaries) and that any such redemption occurs within 90 days following the closing of any such Equity Offering.

(6) Mandatory Redemption. Except as set forth under Sections 4.10 and 4.14 of the Indenture, the Issuer shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

(7) Repurchase at Option of Holder.

(a) Upon the occurrence of certain events, the Issuer may be required to commence an Offer to Purchase pursuant to an Asset Sale Offer or as a result of a Change of Control.

(b) Holders of the Notes that are the subject of an Offer to Purchase will receive notice of an Offer to Purchase pursuant to an Asset Sale Offer or as a result of a Change of Control from the Issuer prior to any related Purchase Date and may elect to have such Notes purchased by completing the form titled "Option of Holder to Elect Purchase" appearing below.

(8) Notice of Redemption. Notice of redemption shall be mailed at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than \$2,000 may be redeemed in part but only in a minimum amount of \$2,000 principal amount (and integral multiples of \$1,000 in excess thereof), unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date, interest ceases to accrue on the Notes or portions hereof called for redemption.

(9) Denominations, Transfer, Exchange. The Notes are in registered form without coupons in initial denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof. The transfer of the Notes may be registered and the Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuer may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuer need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, it need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

(10) Persons Deemed Owners. The registered Holder of a Note may be treated as its owner for all purposes.

(11) Amendment, Supplement and Waiver. Subject to the following paragraphs, the Indenture and the Notes may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes, including consents obtained in connection with a purchase of or tender offer or exchange offer for Notes, and any existing Default or Event of Default or compliance with any provision of the Indenture or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes, including consents obtained in connection with a tender offer or exchange offer for the Notes.

Without the consent of any Holders, the Issuer, the Guarantors, the Trustee and the Collateral Agent, at any time and from time to time, may enter into one or more indentures supplemental to the Indenture for any of the following purposes:

- (1) to evidence the succession of another Person to the Issuer or any of the Guarantors and the assumption by any such successor of the covenants of the Issuer or such Guarantor in the Indenture, the Guarantees, the Security Documents and in the Notes;
- (2) to add to the covenants of the Issuer for the benefit of the Holders, or to surrender any right or power herein conferred upon the Issuer;
- (3) to add additional Events of Default;
- (4) to provide for uncertificated Notes in addition to or in place of the Certificated Notes;
- (5) to evidence and provide for the acceptance of appointment under the Indenture and the Security Documents by a successor Trustee or Collateral Agent;

- (6) to provide for or confirm the issuance of Additional Notes in accordance with the terms of the Indenture;
- (7) to add to the Collateral Securing the Notes, to add a Guarantor or to release a Guarantor and Collateral in accordance with the Indenture;
- (8) to cure any ambiguity, defect, omission, mistake or inconsistency; *provided* that any such change shall not adversely affect the Holders;
- (9) to make any other provisions with respect to matters or questions arising under the Indenture; *provided* that such actions pursuant to this clause shall not adversely affect the interests of the Holders in any material respect, as determined in good faith by the Board of Directors of the Issuer;
- (10) to conform the text of the Indenture, the Security Documents or the Notes to any provision of the “Description of Notes” in the Offering Memorandum;
- (11) to mortgage, pledge, hypothecate or grant any other Lien in favor of the Collateral Agent for the benefit of the Trustee on behalf of the Holders of the Notes, as additional security for the payment and performance of all or any portion of the Obligations under the Indenture, the Notes and the Security Documents, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a Lien is required to be granted to or for the benefit of the Trustee or the Collateral Agent pursuant to the Indenture, any of the Security Documents or otherwise;
- (12) to provide for the release of Collateral from the Lien of the Indenture and the Security Documents or subordinate to such Lien when permitted or required by the Security Documents or the Indenture; or
- (13) to enter into or amend the Intercreditor Agreement and/or the Security Documents (or supplement the Intercreditor Agreement and/or the Security Documents) under circumstances provided therein including (x) if the Issuer incurs First Lien Obligations and/or Permitted Additional Pari Passu Obligations and (y) in connection with the refinancing of the Revolving Credit Agreement and to secure any Permitted Additional Pari Passu Obligations under the Security Documents and to appropriately include any of the foregoing in the Intercreditor Agreement and Security Documents.

With the consent of (i) the Holders of not less than a majority in aggregate principal amount of the outstanding Notes, the Issuer, the Guarantors and the Trustee may enter into an indenture or indentures supplemental to the Indenture (together with the other consents required thereby) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or the Notes or of modifying in any manner the rights of the Holders under the Indenture, including the definitions therein, and (ii) the Holders of not less than a majority in aggregate principal amount of the outstanding Notes and the Permitted Additional Pari Passu Obligations, voting as one class, the Issuer, the Guarantors, the Trustee and the Collateral Agent may amend or otherwise modify in any manner the Security Documents or the obligations thereunder, including, without limitation, as to property that constitutes less than all or substantially all of the Collateral, release the Lien on such Collateral; *provided, however*, that no such supplemental indenture, modification or amendment shall, without the consent of the Holder of each outstanding Note affected thereby:

- (1) change the Stated Maturity of any Note or of any installment of interest on any Note, or reduce the amount payable in respect of the principal thereof or the rate of interest thereon or any premium payable thereon, or reduce the amount that would be due and payable on acceleration of the maturity thereof, or change the place of payment where, or the coin or currency in which, any Note or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof, or change the date on which any Notes may be subject to redemption or reduce the Redemption Price therefor,

(2) reduce the percentage in aggregate principal amount of the outstanding Notes, the consent of whose Holders is required for any such supplemental indenture or amendment, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of the Indenture or certain defaults thereunder and their consequences) provided for in the Indenture,

(3) modify the obligations of the Issuer to make Offers to Purchase upon a Change of Control or from the Excess Proceeds of Asset Sales or Excess Proceeds from an Event of Loss if such modification was done after the occurrence of such Change of Control, or after the obligation to make an Asset Sale Offer has arisen, as applicable; *provided* that prior to the occurrence of a Change Control, the Holders of a majority in aggregate principal amount of the Notes then outstanding may waive the requirement to make or complete an Offer to Purchase,

(4) subordinate, in right of payment, the Notes to any other Debt of the Issuer,

(5) modify any of the provisions of this paragraph or provisions relating to waivers of past payment defaults or the rights of Holders of Notes to receive payments of principal or premium, if any, on the Notes, except to increase any such percentage required for such actions or to provide that certain other provisions of the Indenture cannot be modified or waived without the consent of the Holder of each outstanding Note affected thereby, or

(6) release any Guarantees required to be maintained under the Indenture (other than in accordance with the terms of the Indenture).

In addition, any amendment to, or waiver of, the provisions of the Indenture or any Security Document that has the effect of releasing all or substantially all of the Collateral from the Liens securing the Notes other than in accordance with the Indenture and the Security Documents or modifying the Intercreditor Agreement in any manner adverse in any material respect to the Holders of the Notes will require the consent of the holders of at least 66 <sup>2</sup>/<sub>3</sub>% in aggregate principal amount of the Notes (including, for the avoidance of doubt, Additional Notes) then outstanding, voting as one class.

The Holders of not less than a majority in aggregate principal amount of the outstanding Notes may on behalf of the Holders of all the Notes waive any past default under the Indenture and its consequences, except a default:

(1) in any payment in respect of the principal of (or premium, if any) or interest on any Notes (including any Note which is required to have been purchased pursuant to an Offer to Purchase which has been made by the Issuer), or

(2) in respect of a covenant or provision hereof which under the Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected.

(12) Defaults and Remedies. Events of Default include:

(1) default in the payment in respect of the principal of (or premium, if any, on) any Note at its maturity (whether at Stated Maturity or upon repurchase, acceleration, optional redemption or otherwise);

(2) default in the payment of any interest upon any Note when it becomes due and payable, and continuance of such default for a period of 30 days;

(3) the Issuer fails to accept and pay for Notes tendered when and as required pursuant to an Offer to Purchase as described under Section 4.14;

(4) except as permitted by the Indenture, (i) any Note Guarantee of any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary),

shall for any reason cease to be in full force and effect and enforceable in accordance with its terms (except as specifically provided in the Indenture) for a period of 30 days after written notice thereof by the trustee or the Holders of at least 25% in principal amount of the outstanding Notes or (ii) the Note Guarantee of any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary) shall for any reason be asserted by any of the Guarantors or the Issuer not to be in full force and effect and enforceable in accordance with its terms;

(5) default in the performance, or breach, of any covenant or agreement of the Issuer or any Guarantor in the Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (1), (2), (3) or (4) above), and continuance of such default or breach for a period of 60 days after written notice thereof has been given to the Issuer by the Trustee or to the Issuer and the Trustee by the Holders of at least 25% in aggregate principal amount of the outstanding Notes;

(6) a default or defaults under any bonds, debentures, notes or other evidences of Debt (other than the Notes) by the Issuer or any Restricted Subsidiary having, individually or in the aggregate, a principal or similar amount outstanding of at least \$15.0 million, whether such Debt now exists or shall hereafter be created, which default or defaults shall have resulted in the acceleration of the maturity of such Debt prior to its express maturity or shall constitute a failure to pay at least \$15.0 million of principal amount of such Debt when due and payable after the expiration of any applicable grace period with respect thereto;

(7) the entry against the Issuer or any Restricted Subsidiary that is a Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary) of a final judgment or final judgments for the payment of money in an aggregate amount in excess of \$15.0 million and not covered by insurance (not disputed), by a court or courts of competent jurisdiction, which judgments remain undischarged, unwaived, unstayed, unbonded or unsatisfied for a period of 60 consecutive days;

(8) (i) the Issuer, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

- (a) commences a voluntary case,
- (b) consents to the entry of an order for relief against it in an involuntary case,
- (c) consents to the appointment of a Custodian of it or for all or substantially all of its property,
- (d) makes a general assignment for the benefit of its creditors, or
- (e) admits, in writing, its inability generally to pay its debts as they become due; or

(ii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(a) is for relief against the Issuer or any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, in an involuntary case;

(b) appoints a Custodian of the Issuer or any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary or for all or substantially all of the property of the Issuer or any of the Restricted Subsidiaries;

(c) orders the liquidation of the Issuer or any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary

and the order or decree remains unstayed and in effect for 60 consecutive days; or

(9) (x) with respect to any Collateral having a fair market value in excess of \$15.0 million, individually or in the aggregate, (a) any default or breach by the Issuer or any Guarantor in the performance of its obligations under the Security Documents or the Indenture which adversely affects the condition or value of such Collateral or the enforceability, validity, perfection or priority of the Liens in such Collateral, in each case taken as a whole in any material respect, and continuance of such default or breach for a period of 60 days after written notice thereof by the Trustee or the Holders of at least 25% in principal amount of the outstanding Notes, or (b) any security interest created under the Security Documents or under the Indenture is declared invalid or unenforceable by a court of competent jurisdiction or (y) the Issuer or any of the Guarantors asserts, in any pleading in any court of competent jurisdiction, that any security interest in any Collateral is invalid or unenforceable.

If an Event of Default (other than an Event of Default specified in clause (8) above with respect to the Issuer) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate principal amount of the outstanding Notes may declare the principal of the Notes and any accrued interest on the Notes to be due and payable immediately by a notice in writing to the Issuer (and to the Trustee if given by Holders); *provided, however*, that after such acceleration, but before a judgment or decree based on acceleration, the Holders of a majority in aggregate principal amount of the outstanding Notes may, under certain circumstances, rescind and annul such acceleration if all Events of Default, other than the nonpayment of accelerated principal of or interest on the Notes, have been cured or waived as provided in the Indenture.

In the event of a declaration of acceleration of the Notes solely because an Event of Default described in clause (6) above has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically rescinded and annulled if the event of default or payment default triggering such Event of Default pursuant to clause (6) shall be remedied or cured by the Issuer or a Restricted Subsidiary or waived by the holders of the relevant Debt within 20 Business Days after the declaration of acceleration with respect thereto and if the rescission and annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction obtained by the Trustee for the payment of amounts due on the Notes.

If an Event of Default specified in clause (8) above occurs with respect to the Issuer, the principal of and any accrued interest on the Notes then outstanding shall ipso facto become immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. The Trustee may withhold from Holders notice of any Default (except Default in payment of principal of, premium, if any, and interest) if the Trustee determines that withholding notice is in the interests of the Holders to do so.

(13) Trustee Dealings with Issuer. The Trustee, in its individual or any other capacity, may make loans to, accept deposits from and perform services for Issuer, the Guarantors or their respective Affiliates, and may otherwise deal with Issuer, the Guarantors or their respective Affiliates, as if it were not the Trustee.

(14) No Recourse Against Others. No director, officer, employee, stockholder, general or limited partner, member or incorporator, past, present or future, of the Issuer, the Guarantors or any of their respective Subsidiaries, as such or in such capacity, shall have any personal liability for any obligations of the Issuer under the Notes, any Guarantee or the Indenture by reason of his, her or its status as such director, officer, employee, stockholder, general or limited partner, member or incorporator.

(15) Authentication. This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(16) Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(17) CUSIP, ISIN Numbers. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP, ISIN or other similar numbers in notices of redemption as a convenience to the Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Issuer shall furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, NY 13203  
Facsimile: 315-475-9616  
Attention: William E. Myers, Vice President and General Counsel

ASSIGNMENT FORM

To assign this Note, fill in the form below: (I) or (we) assign and transfer this Note to

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint \_\_\_\_\_  
to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: \_\_\_\_\_

Your Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the  
face of this Note)

Signature guarantee: \_\_\_\_\_  
(Signature must be guaranteed by a participant in a recognized signature guarantee medallion program)

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuer pursuant to Sections 4.10 (Asset Sale) or 4.14 (Change of Control) of the Indenture, check the box below:

☐ Section 4.10      ☐ Section 4.14

If you want to elect to have only part of the Note purchased by the Issuer pursuant to Section 4.10 or 4.14 of the Indenture, state the amount you elect to have purchased: \$

Date: \_\_\_\_\_

Your Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the Note)

Tax Identification No.:

Signature guarantee: \_\_\_\_\_  
(Signature must be guaranteed by a participant in a recognized signature guarantee medallion program)

CERTIFICATE TO BE DELIVERED UPON  
EXCHANGE OR REGISTRATION OF TRANSFER RESTRICTED NOTES

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, NY 13203  
Facsimile: 315-475-9616  
Attention: William E. Myers, Vice President and General Counsel

The Bank of New York Mellon Trust Company, N.A.  
525 William Penn Place, 38th Floor  
Pittsburgh, PA 15259  
Facsimile: (412) 234-7535  
Attention: Corporate Unit

Re: Carrols Restaurant Group, Inc.  
11.25% Senior Secured Second Lien Notes due 2018

CUSIP # \_\_\_\_\_

Reference is hereby made to that certain Indenture dated May 30, 2012 (the “*Indenture*”) among Carrols Restaurant Group, Inc. (the “*Issuer*”), the guarantors party thereto and The Bank of New York Mellon Trust Company, N.A., as trustee (the “*Trustee*”). Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

This certificate relates to \$ \_\_\_\_\_ principal amount of Notes held in (check applicable space) \_\_\_\_\_ book-entry or \_\_\_\_\_ definitive form by the undersigned.

The undersigned \_\_\_\_\_ (transferor) (check one box below):

☐ hereby requests the Registrar to deliver in exchange for its beneficial interest in the Global Note held by the Depositary a Note or Notes in definitive, registered form of authorized denominations and an aggregate principal amount equal to its beneficial interest in such Global Note (or the portion thereof indicated above), in accordance with Section 2.6 of the Indenture; or

☐ hereby requests the Trustee to exchange or register the transfer of a Note or Notes to \_\_\_\_\_ (transferee).

In connection with any transfer of any of the Notes evidenced by this certificate occurring prior to the expiration of the periods referred to in Rule 144(b) under the Securities Act of 1933, as amended, the undersigned confirms that such Notes are being transferred in accordance with its terms:

CHECK ONE BOX BELOW:

(1) ☐ to the Issuer or any of its subsidiaries; or

(2) ☐ inside the United States to a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act of 1933, as amended) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in reliance on Rule 144A under the Securities Act of 1933, as amended, in each case pursuant to and in compliance with Rule 144A thereunder; or

(3) ☐ outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act of 1933, as amended, in compliance with Rule 904 thereunder.

Unless one of the boxes is checked, the Registrar will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered holder thereof.

\_\_\_\_\_  
Signature

Signature guarantee: \_\_\_\_\_  
(Signature must be guaranteed by a participant in a recognized signature guarantee medallion program)

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended (“*Rule 144A*”), and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

[Name of Transferee]

Dated: \_\_\_\_\_

NOTICE: To be executed by an executive officer

SCHEDULE OF EXCHANGES OF 11.25% SENIOR SECURED SECOND LIEN NOTES

The following exchanges of a part of this Global Note for other 11.25% Senior Secured Second Lien Notes have been made:

<u>Date of Exchange</u>	<u>Amount of Decrease in Principal Amount of this Global Note</u>	<u>Amount of Increase in Principal Amount of this Global Note</u>	<u>Principal Amount of this Global Note Following Such Decrease (or Increase)</u>	<u>Signature of Authorized Officer of Trustee or 11.25% Senior Secured Second Lien Notes Custodian</u>

## FORM OF NOTATIONAL GUARANTEE

Each Guarantor listed below (hereinafter referred to as the “*Guarantor*,” which term includes any successors or assigns under that certain Indenture, dated as of May 30, 2012, by and among Carrols Restaurant Group, Inc. (the “*Issuer*”) and the Trustee (as amended and supplemented from time to time, the “*Indenture*”) and any additional Guarantors) has guaranteed the Notes and the obligations of the Issuer under the Indenture, which include (i) the due and punctual payment of the principal of, premium, if any, and interest on the Notes of the Issuer, whether at stated maturity, by acceleration or otherwise, the due and punctual payment of interest on the overdue principal and premium, if any, and (to the extent permitted by law) interest on any interest, if any, on the Notes, and the due and punctual performance of all other obligations of the Issuer to the Holders or the Trustee all in accordance with the terms set forth in Article IV of the Indenture, (ii) in case of any extension of time of payment or renewal of any Notes or any such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise, and (iii) the payment of any and all costs and expenses (including reasonable attorneys’ fees) incurred by the Trustee or any Holder in enforcing any rights under this Note Guarantee or the Indenture.

The obligations of each Guarantor to the Holders and to the Trustee pursuant to this Note Guarantee and the Indenture are expressly set forth in Article XI of the Indenture and reference is hereby made to such Indenture for the precise terms of this Note Guarantee.

No stockholder, employee, officer, director, general or limited partner, member or incorporator, as such, past, present or future of each Guarantor shall have any liability under this Note Guarantee by reason of his or its status as such stockholder, employee, officer, director, general or limited partner, member or incorporator.

This is a continuing Note Guarantee and shall remain in full force and effect and shall be binding upon each Guarantor and its successors and assigns until full and final payment of all of the Issuer’s obligations under the Notes and Indenture or until released in accordance with the Indenture and shall inure to the benefit of the successors and assigns of the Trustee and the Holders, and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges herein conferred upon that party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Note Guarantee of payment and not of collectability.

This Note Guarantee shall not be valid or obligatory for any purpose until the certificate of authentication on the Note upon which this Note Guarantee is noted shall have been executed by the Trustee under the Indenture by the manual signature of one of its authorized signatories. The Obligations of each Guarantor under its Note Guarantee shall be limited to the extent necessary to insure that it does not constitute a fraudulent conveyance under applicable law.

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THE TERMS OF ARTICLE XII OF THE INDENTURE ARE INCORPORATED HEREIN BY REFERENCE.

Capitalized terms used herein have the same meanings given in the Indenture unless otherwise indicated.

Dated as of

[GUARANTORS]

By: \_\_\_\_\_  
Name:  
Title:

[FORM OF CERTIFICATE TO BE DELIVERED  
IN CONNECTION WITH TRANSFERS PURSUANT TO RULE 144A]

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, NY 13203  
Facsimile: 315-475-9616  
Attention: William E. Myers, Vice President and General Counsel

The Bank of New York Mellon Trust Company, N.A.  
525 William Penn Place, 38th Floor  
Pittsburgh, PA 15259  
Facsimile: (412) 234-7535  
Attention: Corporate Unit

Re: Carrols Restaurant Group, Inc. (the “Issuer”) 11.25% Senior Secured Second Lien Notes due 2018 (the “Notes”)

Ladies and Gentlemen:

In connection with our proposed sale of \$ \_\_\_\_\_ aggregate principal amount at maturity of the Notes, we hereby certify that such transfer is being effected pursuant to and in accordance with Rule 144A (“*Rule 144A*”) under the United States Securities Act of 1933, as amended (the “*Securities Act*”), and, accordingly, we hereby further certify that the Notes are being transferred to a person that we reasonably believe is purchasing the Notes for its own account, or for one or more accounts with respect to which such person exercises sole investment discretion, and such person and each such account is a “qualified institutional buyer” within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Notes are being transferred in compliance with any applicable blue sky securities laws of any state of the United States.

You and the Issuer are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

\_\_\_\_\_  
[Name of Transferor]

By: \_\_\_\_\_

Authorized Signature

Signature guarantee: \_\_\_\_\_

(Signature must be guaranteed by a participant in a recognized signature guarantee medallion program)

[FORM OF CERTIFICATE TO BE DELIVERED  
IN CONNECTION WITH TRANSFERS  
PURSUANT TO REGULATION S]

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, NY 13203  
Facsimile: 315-475-9616  
Attention: William E. Myers, Vice President and General Counsel

The Bank of New York Mellon Trust Company, N.A.  
525 William Penn Place, 38th Floor  
Pittsburgh, PA 15259  
Facsimile: (412) 234-7535  
Attention: Corporate Unit

Re: Carrols Restaurant Group, Inc. (the “Issuer”) 11.25% Senior Secured Second Lien Notes due 2018 (the “Notes”).

Ladies and Gentlemen:

In connection with our proposed sale of \$            aggregate principal amount of the Notes, we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the U.S. Securities Act of 1933, as amended (the “*Securities Act*”), and, accordingly, we represent that:

(1) the offer of the Notes was not made to a person in the United States;

(2) either (a) at the time the buy order was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States or (b) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;

(3) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable; and

(4) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act.

In addition, if the sale is made during a restricted period and the provisions of Rule 903(b) or Rule 904(b) of Regulation S are applicable thereto, we confirm that such sale has been made in accordance with the applicable provisions of Rule 903(b) or Rule 904(b), as the case may be.

The Issuer and you are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

\_\_\_\_\_  
[Name of Transferor]

By: \_\_\_\_\_  
Authorized Signature

Signature guarantee: \_\_\_\_\_  
(Signature must be guaranteed by a participant in a recognized signature guarantee medallion program)

# **FORM OF SUPPLEMENTAL INDENTURE IN RESPECT OF GUARANTEE**

SUPPLEMENTAL INDENTURE, dated as of [ ] (this “Supplemental Indenture”), among [name of Guarantor[s]] (the “Guarantor[s]”), Carrols Restaurant Group, Inc., a Delaware corporation (the “Issuer”) and The Bank of New York Mellon Trust Company, N.A., a national banking association, as Trustee (the “Trustee”) under the Indenture referred to below.

## W I T N E S S E T H:

WHEREAS, the Issuer and the Trustee are parties to an Indenture, dated as of May 30, 2012 (as amended, supplemented, waived or otherwise modified, the “Indenture”), providing for the issuance of 11.25% Senior Secured Second Lien Notes due 2018 of the Issuer (the “Notes”);

WHEREAS, Section 11.8 of the Indenture provides that the Issuer is required to cause the Guarantor[s] to execute and deliver to the Trustee a supplemental indenture pursuant to which the Guarantor[s] shall guarantee the Notes pursuant to [a] Guarantee[s] on the terms and conditions set forth herein and in Article XI of the Indenture;

WHEREAS, [the][each] Guarantor desires to enter into this Supplemental Indenture for good and valuable consideration, including substantial economic benefit in that the financial performance and condition of such Guarantor is dependent on the financial performance and condition of the Issuer;

WHEREAS, pursuant to Section 9.1 of the Indenture, the parties hereto are authorized to execute and deliver this Supplemental Indenture to amend the Indenture, without the consent of any Holder; and

WHEREAS, all things necessary to make this a legal, valid and binding agreement of the Issuer have been done.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guarantor[s], the Issuer and the Trustee mutually covenant and agree for the benefit of the Holders of the Notes as follows:

1. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the preamble or recital hereto are used herein as therein defined. The words “herein,” “hereof” and “hereby” and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular section hereof.

2. Agreement to Guarantee. [The] [Each] Guarantor hereby agree[s], jointly and severally with [all] [any] other Guarantor[s], fully and unconditionally, to guarantee the Notes and the obligations of the Issuer under the Indenture and the Notes on the terms and subject to the conditions set forth in Article XI of the Indenture and to be bound by (and shall be entitled to the benefits of) all other applicable provisions of the Indenture as a Guarantor.

3. Termination, Release and Discharge. [The] [Each] Guarantor’s Guarantee shall terminate and be of no further force or effect, and [the] [each] Guarantor shall be released and discharged from all obligations in respect of its Guarantee, only as and when provided in Section 11.5 of the Indenture.

4. Parties. Nothing in this Supplemental Indenture is intended or shall be construed to give any Person, other than the Holders and the Trustee, any legal or equitable right, remedy or claim under or in respect of [the] [each] Guarantor’s Guarantee or any provision contained herein or in Article XI of the Indenture.

5. Governing Law. THIS SUPPLEMENTAL INDENTURE, THE INDENTURE, THE GUARANTEES AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, BUT WITHOUT GIVING EFFECT TO APPLICABLE

PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT SUCH PRINCIPLES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. THE ISSUER AND EACH GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK OR ANY FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE INDENTURE, THE GUARANTEES AND THE NOTES, AND IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, JURISDICTION OF THE AFORESAID COURTS. THE ISSUER AND EACH GUARANTOR IRREVOCABLY WAIVES, TO THE FULLEST EXTENT THAT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, TRIAL BY JURY AND ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE TRUSTEE OR ANY HOLDER OF THE NOTES TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE ISSUER OR ANY GUARANTOR IN ANY OTHER JURISDICTION.

6. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby. The Trustee makes no representation or warranty as to the validity or sufficiency of this Supplemental Indenture.

7. Counterparts. The parties hereto may sign one or more copies of this Supplemental Indenture in counterparts, all of which together shall constitute one and the same agreement.

8. Headings. The section headings herein are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first above written.

[GUARANTOR], as Guarantor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CARROLS RESTAURANT GROUP, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE BANK OF NEW YORK MELLON TRUST COMPANY,  
N.A., as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**REGISTRATION RIGHTS AGREEMENT**

by and among

**Carrols Restaurant Group, Inc.**

and

**Wells Fargo Securities, LLC**

Dated as of May 30, 2012

## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this “*Agreement*”) is made and entered into as of May 30, 2012, by Carrols Restaurant Group, Inc., a Delaware corporation (the “*Issuer*”), the entities named in Schedule I hereto, (the “*Guarantors*”), and Wells Fargo Securities, LLC, as representative (the “*Representative*”) of the Initial Purchasers (the “*Initial Purchasers*”) set forth on Schedule I to the Purchase Agreement who have agreed to purchase the Issuer’s 11.25% Senior Secured Second Lien Notes due 2018 (the “*Notes*”) fully and unconditionally guaranteed by the Guarantors (the “*Guarantees*”) pursuant to the Purchase Agreement. The Notes and the Guarantees attached thereto are herein collectively referred to as the “*Securities*.”

This Agreement is made pursuant to the Purchase Agreement, dated May 24, 2012 (the “*Purchase Agreement*”), among the Issuer, the Guarantors and the Representative (i) for the benefit of the Initial Purchasers and (ii) for the benefit of the holders from time to time of Transfer Restricted Securities, including the Initial Purchasers. In order to induce the Initial Purchasers to purchase the Securities, the Issuer has agreed to provide the registration rights set forth in this Agreement. The execution and delivery of this Agreement is a condition to the obligations of the Initial Purchasers, as set forth in Section 6(m) of the Purchase Agreement.

The parties hereby agree as follows:

### SECTION 1. *Definitions.*

As used in this Agreement, the following capitalized terms shall have the following meanings:

*Additional Interest:* As defined in Section 5 hereof.

*Advice:* As defined in Section 6(c) hereof.

*Agreement:* As defined in the preamble hereto.

*Broker-Dealer:* Any broker or dealer registered under the Exchange Act.

*Business Day:* Any day other than a Saturday, Sunday or U.S. federal holiday or a day on which banking institutions or trust companies located in New York, New York are authorized or obligated to be closed.

*Closing Date:* The date of this Agreement.

*Commission:* The Securities and Exchange Commission.

*Consume:* A registered Exchange Offer shall be deemed “*Consummated*” for purposes of this Agreement upon the occurrence of (i) the filing and effectiveness under the Securities Act of the Exchange Offer Registration Statement relating to the Exchange Securities to be issued in the Exchange Offer, (ii) the maintenance of such Registration Statement continuously effective and the keeping of the Exchange Offer open for a period not less than the minimum period

required pursuant to Section 3(b) hereof, and (iii) the delivery by the Issuer to the Registrar under the Indenture of Exchange Securities in the same aggregate principal amount as the aggregate principal amount of Transfer Restricted Securities that were tendered by Holders thereof pursuant to the Exchange Offer.

*Exchange Act:* The Securities Exchange Act of 1934, as amended.

*Exchange Date:* As defined in Section 3(a) hereto.

*Exchange Offer:* The registration by the Issuer under the Securities Act of the Exchange Securities pursuant to a Registration Statement pursuant to which the Issuer offers the Holders of all outstanding Transfer Restricted Securities the opportunity to exchange all such outstanding Transfer Restricted Securities held by such Holders for Exchange Securities in an aggregate principal amount equal to the aggregate principal amount of the Transfer Restricted Securities tendered in such exchange offer by such Holders.

*Exchange Offer Registration Statement:* The Registration Statement relating to the Exchange Offer, including the related Prospectus.

*Exchange Securities:* The 11.25% Senior Secured Second Lien Notes due 2018, of the same series under the Indenture as the Transfer Restricted Securities, to be issued to Holders in exchange for Transfer Restricted Securities pursuant to this Agreement.

*FINRA:* Financial Industry Regulatory Authority, Inc.

*Guarantees:* As defined in the preamble hereto.

*Guarantors:* As defined in the preamble hereto.

*Holders:* As defined in Section 2(b) hereof.

*Indemnified Holder:* As defined in Section 8(a) hereof.

*Indenture:* The Indenture, dated as of May 30, 2012, by and among the Issuer, the Guarantors and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), pursuant to which the Securities are to be issued, as such Indenture is amended or supplemented from time to time in accordance with the terms thereof.

*Initial Placement:* The issuance and sale by the Issuer of the Securities to the Initial Purchasers pursuant to the Purchase Agreement.

*Initial Purchasers:* As defined in the preamble hereto.

*Initial Securities:* The Securities issued and sold by the Issuer to the Initial Purchasers pursuant to the Purchase Agreement on the Closing Date.

*Issuer:* As defined in the preamble hereto.

*Notes:* As defined in the preamble hereto.

*Person*: An individual, partnership, corporation, trust or unincorporated organization, or a government or agency or political subdivision thereof.

*Prospectus*: The prospectus included in a Registration Statement, as amended or supplemented by any prospectus supplement and by all other amendments thereto, including post-effective amendments, and all material incorporated by reference into such Prospectus.

*Purchase Agreement*: As defined in the preamble hereto.

*Registration Actions*: As defined in Section 4(c) hereof.

*Registration Default*: As defined in Section 5 hereof.

*Registration Statement*: Any registration statement of the Issuer relating to (a) an offering of Exchange Securities pursuant to an Exchange Offer or (b) the registration for resale of Transfer Restricted Securities pursuant to the Shelf Registration Statement, which is filed pursuant to the provisions of this Agreement, in each case, including the Prospectus included therein, all amendments and supplements thereto (including post-effective amendments) and all exhibits and material incorporated by reference therein.

*Securities*: As defined in the preamble hereto.

*Securities Act*: The Securities Act of 1933, as amended.

*Shelf Filing Deadline*: As defined in Section 4(a) hereof.

*Shelf Registration Statement*: As defined in Section 4(a) hereof.

*Suspension Period*: As defined in Section 4(c) hereof.

*Transfer Restricted Securities*: The Securities; *provided* that the Securities shall cease to be Transfer Restricted Securities on the earliest to occur of (i) the date on which a Registration Statement with respect to such Securities has become effective under the Securities Act and such Securities have been exchanged or disposed of pursuant to such Registration Statement or (ii) the date on which such Securities cease to be outstanding.

*Trust Indenture Act*: The Trust Indenture Act of 1939, as amended.

*Underwritten Registration or Underwritten Offering*: A registration in which securities of the Issuer are sold to an underwriter for reoffering to the public.

SECTION 2. *Securities Subject to this Agreement.*

(a) *Transfer Restricted Securities*. The securities entitled to the benefits of this Agreement are the Transfer Restricted Securities.

(b) *Holders of Transfer Restricted Securities*. A Person is deemed to be a holder of Transfer Restricted Securities (each, a “*Holder*”) whenever such Person owns Transfer Restricted Securities.

SECTION 3. *Registered Exchange Offer.*

(a) Unless the Exchange Offer shall not be permissible under applicable law or Commission policy (after the procedures set forth in Section 6(a) hereof have been complied with), or there are no Transfer Restricted Securities outstanding, the Issuer shall (i) cause to be filed with the Commission as soon as practicable after the Closing Date, but in no event later than 180 days after the Closing Date (or if such 180th day is not a Business Day, the next succeeding Business Day), a Registration Statement under the Securities Act relating to the Exchange Securities and the Exchange Offer, (ii) use its reasonable best efforts to cause such Registration Statement to be declared effective at the earliest possible time, (iii) in connection with the foregoing, (A) file all pre-effective amendments to such Registration Statement as may be necessary in order to cause such Registration Statement to become effective, (B) if applicable, file a post-effective amendment to such Registration Statement pursuant to Rule 430A under the Securities Act and (C) use its reasonable best efforts to cause all necessary filings in connection with the registration and qualification of the Exchange Securities to be made under the state securities or blue sky laws of such jurisdictions to permit Consummation of the Exchange Offer; *provided, however*, that neither the Issuer nor the Guarantors shall be required to (x) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(a) or (y) take any action which would subject it to general service of process or taxation in any such jurisdiction where it is not then so subject and (iv) as promptly as practicable after the effectiveness of such Registration Statement, commence the Exchange Offer. The Issuer and each of the Guarantors shall use their reasonable best efforts to Consummate the Exchange Offer not later than 270 days following the Closing Date (or if such 270th day is not a Business Day, the next succeeding Business Day) (the “*Exchange Date*”). The Exchange Offer shall be on the appropriate form permitting registration of the Exchange Securities to be offered in exchange for the Transfer Restricted Securities and to permit resales of Transfer Restricted Securities held by Broker-Dealers as contemplated by Section 3(c) hereof.

(b) The Issuer and the Guarantors shall use their reasonable best efforts to cause the Exchange Offer Registration Statement to be effective continuously and shall keep the Exchange Offer open for a period of not less than the minimum period required under applicable federal and state securities laws to Consummate the Exchange Offer; *provided, however*, that in no event shall such period be less than 30 days after the date notice of the Exchange Offer is mailed to the Holders; *provided, further*, that such period shall be extended by the number of days in any Suspension Period. The Issuer shall cause the Exchange Offer to comply with all applicable federal and state securities laws. No securities other than the Exchange Securities shall be included in the Exchange Offer Registration Statement. The Issuer shall use its best efforts to cause the Exchange Offer to be Consummated by the Exchange Date.

(c) The Issuer shall indicate in a “Plan of Distribution” section contained in the Prospectus forming a part of the Exchange Offer Registration Statement that any Broker-Dealer who holds Transfer Restricted Securities that were acquired for its own account as a result of market-making activities or other trading activities (other than Transfer Restricted Securities acquired directly from the Issuer), may exchange such Transfer Restricted Securities pursuant to the Exchange Offer; however, such Broker-Dealer may be deemed to be an “underwriter” within the meaning of the Securities Act and must, therefore, deliver a prospectus meeting the requirements of the Securities Act in connection with any resales of the Exchange Securities received by such

Broker-Dealer in the Exchange Offer, which prospectus delivery requirement may be satisfied by the delivery by such Broker-Dealer of the Prospectus contained in the Exchange Offer Registration Statement. Such “Plan of Distribution” section shall also contain all other information with respect to such resales by Broker-Dealers that the Commission may require in order to permit such resales pursuant thereto, but such “Plan of Distribution” shall not name any such Broker-Dealer or disclose the amount of Transfer Restricted Securities held by any such Broker-Dealer except to the extent required by the Commission as a result of a change in policy after the date of this Agreement.

The Issuer and the Guarantors shall use their reasonable best efforts to keep the Exchange Offer Registration Statement continuously effective, supplemented and amended as required by the provisions of Section 6(c) hereof to the extent necessary to ensure that it is available for resales of Transfer Restricted Securities acquired by Broker-Dealers for their own accounts as a result of market-making activities or other trading activities, and to ensure that it conforms with the requirements of this Agreement, the Securities Act and the policies, rules and regulations of the Commission as announced from time to time, for a period ending on the earlier of (i) 180 days from the date on which the Exchange Offer Registration Statement is declared effective and (ii) the date on which a Broker-Dealer is no longer required to deliver a prospectus in connection with market-making or other trading activities.

The Issuer shall provide sufficient copies of the latest version of such Prospectus to Broker-Dealers promptly upon request at any time during such 180-day (or shorter as provided in the foregoing sentence) period in order to facilitate such resales.

#### SECTION 4. *Shelf Registration.*

(a) *Shelf Registration.* If (i) the Issuer is not required to file an Exchange Offer Registration Statement or to consummate the Exchange Offer solely because the Exchange Offer is not permitted by applicable law or Commission policy (after the procedures set forth in Section 6(a) hereof have been complied with), (ii) for any reason the Exchange Offer is not Consummated by the Exchange Date, or (iii) prior to the Exchange Date: (A) the Initial Purchasers request from the Issuer with respect to Transfer Restricted Securities not eligible to be exchanged for Exchange Securities in the Exchange Offer, (B) with respect to any Holder of Transfer Restricted Securities such Holder notifies the Issuer that (i) such Holder is prohibited by applicable law or Commission policy from participating in the Exchange Offer, (ii) such Holder may not resell the Exchange Securities acquired by it in the Exchange Offer to the public without delivering a prospectus and that the Prospectus contained in the Exchange Offer Registration Statement is not appropriate or available for such resales by such Holder, or (iii) such Holder is a Broker-Dealer and holds Transfer Restricted Securities acquired directly from the Issuer or one of its affiliates or (C) the Initial Purchasers notify the Issuer they will not receive Exchange Securities in exchange for Transfer Restricted Securities constituting any portion of the Initial Purchasers’ unsold allotment, the Issuer and the Guarantors shall:

(x) cause to be filed a shelf registration statement pursuant to Rule 415 under the Securities Act, which may be an amendment to the Exchange Offer Registration Statement (in either event, the “*Shelf Registration Statement*”), on or prior to the 50th day after the date on which the Issuer receives such notice from a Holder of Transfer Restricted

Securities or an Initial Purchaser (such date being the “*Shelf Filing Deadline*”), which Shelf Registration Statement shall provide for resales of all Transfer Restricted Securities the Holders of which shall have provided the information required pursuant to Section 4(b) hereof; provided that the Issuer and the Guarantors shall not be required to cause such Shelf Registration Statement to be filed earlier than the 180th day following the Closing Date (or if such 180th day is not a Business Day, the next succeeding Business Day); and

(y) use their reasonable best efforts to cause such Shelf Registration Statement to be declared effective as promptly as practicable, but no later than (A) 60 days (or if such 60th day is not a Business Day the next succeeding Business Day), or (B) 50 days if the Shelf Registration Statement is not reviewed by the Commission (or if such 50th day is not a Business Day, the next succeeding Business Day), after such time such obligation to file first arises; provided that the Issuer and the Guarantors shall not be required to cause such Shelf Registration Statement to be declared effective earlier than the 270th day following the Closing Date (or if such 270th day is not a Business Day, the next succeeding Business Day).

The Issuer and each of the Guarantors shall use their reasonable best efforts to keep such Shelf Registration Statement continuously effective, supplemented and amended as required by the provisions of Sections 6(b) and (c) hereof to the extent necessary to ensure that it is available for resales of Transfer Restricted Securities by the Holders of such Securities entitled to the benefit of this Section 4(a), and to ensure that it conforms with the requirements of this Agreement, the Securities Act and the policies, rules and regulations of the Commission as announced from time to time, from the date on which the Shelf Registration Statement is declared effective by the Commission until the expiration of the one-year period referred to in Rule 144 applicable to securities held by non-affiliates under the Securities Act (or shorter period that will terminate when all the Transfer Restricted Securities covered by such Shelf Registration Statement have been sold pursuant to such Shelf Registration Statement.

(b) *Provision by Holders of Certain Information in Connection with the Shelf Registration Statement.* No Holder of Transfer Restricted Securities may include any of its Transfer Restricted Securities in any Shelf Registration Statement pursuant to this Agreement unless and until such Holder furnishes to the Issuer in writing, within 10 Business Days after receipt of a request therefor, such information as the Issuer may reasonably request for use in connection with any Shelf Registration Statement or Prospectus or preliminary Prospectus included therein. Each Holder as to which any Shelf Registration Statement is being effected agrees to furnish promptly to the Issuer all information required to be disclosed in order to make the information previously furnished to the Issuer by such Holder not materially misleading.

(c) *Suspension.* Notwithstanding anything to the contrary and subject to the limitation set forth in the next succeeding paragraph, at any time after the effectiveness of the Shelf Registration Statement, the Issuer shall be entitled to suspend its obligation to file any amendment to the Shelf Registration Statement, furnish any supplement or amendment to a Prospectus included in the Shelf Registration Statement, make any other filing with the Commission, cause the Shelf Registration Statement or other filing with the Commission to remain effective or take any similar action (collectively, “*Registration Actions*”) upon (A) the issuance by the Commission

of a stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of proceedings with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Securities Act, (B) the occurrence of any event or the existence of any fact as a result of which the Shelf Registration Statement would or shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or the related Prospectus would or shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or (C) the occurrence or existence of any corporate development that, in the good faith determination of the Board of Directors of the Issuer, makes it appropriate to postpone or suspend the availability of the Shelf Registration Statement and the related Prospectus. Upon the occurrence of any of the conditions described in clause (A), (B) or (C) above, the Issuer shall give prompt notice (a "*Suspension Notice*") thereof to the Holders. Upon the termination of such condition, the Issuer shall give prompt notice thereof to the Holders and shall promptly proceed with all Registration Actions that were suspended pursuant to this paragraph.

The Issuer may only suspend Registration Actions pursuant to the preceding paragraph for one or more periods (each, a "*Suspension Period*") not to exceed, in the aggregate, (x) forty-five (45) days in any three month period or (y) ninety (90) days in any twelve month period. Any Suspension Period will not alter the obligations of the Issuer to pay Additional Interest under the circumstances set forth in Section 5 hereof, if applicable. Each Suspension Period shall be deemed to begin on the date the relevant Suspension Notice is given to the Holders and shall be deemed to end on the earlier to occur of (1) the date on which the Issuer gives the Holders a notice that the Suspension Period has terminated and (2) the date on which the number of days during which a Suspension Period has been in effect exceeds, in the aggregate, (x) forty-five (45) days in any three month period or (y) ninety (90) days in any twelve month period.

#### SECTION 5. *Additional Interest.*

If (i) the Exchange Offer has not been Consummated on or prior to the date specified for such consummation in this Agreement, (ii) any Shelf Registration Statement, if required hereby, has not been declared effective by the Commission on or prior to the date specified for such effectiveness in this Agreement or (iii) any Registration Statement required by this Agreement has been declared effective but ceases to be effective at any time at which it is required to be effective under this Agreement (other than during a Suspension Period), as applicable (each such event referred to in clauses (i) through (iii), a "*Registration Default*"), the Issuer hereby agrees that the interest rate borne by the Transfer Restricted Securities shall be increased by 0.25% per annum during the 90-day period immediately following the occurrence of any Registration Default and shall increase by 0.25% per annum at the end of each subsequent 90-day period (such increase, "*Additional Interest*"), but in no event shall such increase exceed 1.00% per annum. Following the cure of all Registration Defaults relating to the particular Transfer Restricted Securities the interest rate borne by the relevant Transfer Restricted Securities will be reduced to the original interest rate borne by such Transfer Restricted Securities; *provided, however*, that, if after any such reduction in interest rate, a different Registration Default occurs, the interest rate borne by the relevant Transfer Restricted Securities shall again be increased pursuant to the foregoing provisions.

Notwithstanding the foregoing, (i) the amount of Additional Interest pursuant to this Section 5 shall not increase because more than one Registration Default has occurred and is continuing and (ii) a Holder of Transfer Restricted Securities who is not entitled to the benefits of the Shelf Registration Statement shall not be entitled to Additional Interest with respect to a Registration Default that pertains to the Shelf Registration Statement.

All accrued Additional Interest shall be payable to the Holders entitled thereto, in the manner provided for the payment of interest in the Indenture, as more fully set forth in the Indenture and the Securities. All obligations of the Issuer and the Guarantors set forth in the preceding paragraph that are outstanding with respect to any Transfer Restricted Security at the time such security ceases to be a Transfer Restricted Security shall survive until such time as all such obligations with respect to such security shall have been satisfied in full.

SECTION 6. *Registration Procedures.*

(a) *Exchange Offer Registration Statement.* In connection with the Exchange Offer, the Issuer and the Guarantors shall comply with all of the provisions of Section 6(c) hereof, shall use their reasonable best efforts to effect such exchange to permit the sale of Transfer Restricted Securities being sold in accordance with the intended method or methods of distribution thereof set forth in the Registration Statement, and shall comply with all of the following provisions:

(i) As a condition to its participation in the Exchange Offer pursuant to the terms of this Agreement, each Holder of Transfer Restricted Securities shall furnish, upon the request of the Issuer, prior to the Consummation thereof, a written representation to the Issuer (which may be contained in the letter of transmittal contemplated by the Exchange Offer Registration Statement) to the effect that (A) it is not an affiliate of the Issuer, (B) it is not engaged in, and does not intend to engage in, and has no arrangement or understanding with any Person to participate in, a distribution of the Exchange Securities to be issued in the Exchange Offer and (C) it is acquiring the Exchange Securities in its ordinary course of business. In addition, all such Holders of Transfer Restricted Securities shall otherwise cooperate in the Issuer's preparations for the Exchange Offer. Each Holder hereby acknowledges and agrees that any Broker-Dealer and any such Holder using the Exchange Offer to participate in a distribution of the securities to be acquired in the Exchange Offer (1) could not under Commission policy as in effect on the date of this Agreement rely on the position of the Commission enunciated in Morgan Stanley and Co., Inc. (available June 5, 1991) and Exxon Capital Holdings Corporation (available May 13, 1988), as interpreted in the Commission's letter to Shearman & Sterling dated July 2, 1993, and similar no-action letters, and (2) must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction and that such a secondary resale transaction should be covered by an effective registration statement containing the selling security holder information required by Item 507 or 508, as applicable, of Regulation S-K if the resales are of Exchange Securities obtained by such Holder in exchange for Transfer Restricted Securities acquired by such Holder directly from the Issuer.

(b) *Shelf Registration Statement.* If required pursuant to Section 4, in connection with the Shelf Registration Statement, the Issuer and each of the Guarantors shall comply with

all the provisions of Section 6(c) hereof and shall use its reasonable best efforts to effect such registration to permit the sale of the Transfer Restricted Securities being sold in accordance with the intended method or methods of distribution thereof set forth in such Shelf Registration Statement, and pursuant thereto the Issuer and each of the Guarantors will as promptly as practicable prepare and file with the Commission a Registration Statement relating to the registration on any appropriate form under the Securities Act, which form shall be available for the sale of the Transfer Restricted Securities in accordance with the intended method or methods of distribution thereof set forth in such Shelf Registration Statement.

(c) *General Provisions.* Except as otherwise provided herein, in connection with any Registration Statement and any Prospectus required by this Agreement to permit the sale or resale of Transfer Restricted Securities (including, without limitation, any Registration Statement and the related Prospectus required to permit resales of Transfer Restricted Securities by Broker-Dealers), the Issuer and each of the Guarantors shall:

(i) use its reasonable best efforts to keep such Registration Statement continuously effective and provide all requisite financial statements for the period specified in Section 3 or 4 hereof, as applicable; upon the occurrence of any event that would cause any such Registration Statement or the Prospectus contained therein (A) to contain a material misstatement or omission or (B) not to be effective and usable for resale of Transfer Restricted Securities during the period required by this Agreement, the Issuer shall file as promptly as practicable an appropriate amendment to such Registration Statement, in the case of clause (A), correcting any such misstatement or omission, and, in the case of either clause (A) or (B), use their best efforts to cause such amendment to be declared effective and such Registration Statement and the related Prospectus to become usable for their intended purpose(s) as soon as practicable thereafter;

(ii) prepare and file with the Commission such amendments and post-effective amendments to the applicable Registration Statement as may be necessary to keep the Registration Statement effective for the applicable period set forth in Section 3 or 4 hereof, as applicable, or such shorter period as will terminate when all Transfer Restricted Securities covered by such Registration Statement have been sold; cause the Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act, and to comply fully with the applicable provisions of Rules 424 and 430A under the Securities Act in a timely manner; and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the sellers thereof set forth in such Registration Statement or supplement to the Prospectus;

(iii) in the case of a Shelf Registration Statement, advise the underwriter(s), if any, and the selling Holders as promptly as practicable and, if a Prospectus is required to be delivered by any Broker-Dealer in the case of an Exchange Offer, advise the Initial Purchasers as promptly as practicable, and, in each case, if requested by such Persons, to confirm such advice in writing, (A) when the Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to any Registration Statement or any post-effective amendment thereto, when the same has become effective, (B) of any

request by the Commission for amendments to the Registration Statement or amendments or supplements to the Prospectus or for additional information relating thereto, (C) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement under the Securities Act or of the suspension by any state securities commission of the qualification of the Transfer Restricted Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for any of the preceding purposes, (D) of the existence of any fact or the happening of any event that makes any statement of a material fact made in the Registration Statement, the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Registration Statement or the Prospectus in order to make the statements therein not misleading. If at any time the Commission shall issue any stop order suspending the effectiveness of a Registration Statement, or any state securities commission or other regulatory authority shall issue an order suspending the qualification or exemption from qualification of the Transfer Restricted Securities under state securities or blue sky laws, the Issuer and each of the Guarantors shall use its best efforts to obtain the withdrawal or lifting of such order at the earliest practicable time;

(iv) in the case of a Shelf Registration Statement or if a Prospectus is required to be delivered by any Broker-Dealer in the case of an Exchange Offer, furnish without charge to the Initial Purchasers, each selling Holder named in any Registration Statement, and each of the underwriter(s), if any, before filing with the Commission, copies of any Registration Statement or any Prospectus included therein, and permit one legal counsel to the Initial Purchasers and such Holders and underwriter(s), if any, with an opportunity to review and comment upon any such Registration Statement or Prospectus within a reasonable period prior to their filing with the Commission and upon all amendments and supplements thereto such lesser period prior to their filing with the Commission as shall be reasonable and appropriate under the circumstances, and the Issuer shall not file any documents to which such legal counsel to the Initial Purchasers and such Holders and underwriter(s), if any, reasonably objects in writing (it being agreed that such writing may for this purpose be in electronic format). Notwithstanding the foregoing, the Issuer shall not be required to take any actions under this Section 6(c)(iv) that are not, in the reasonable opinion of counsel for the Issuer, in compliance with applicable law or to include any disclosure which at the time would have an adverse effect on the business or operations of the Issuer and/or its subsidiaries, as determined in good faith by the Issuer;

(v) promptly prior to the filing of any document that is to be incorporated by reference into such Registration Statement or Prospectus, provide copies of such document, to the extent requested, to the Initial Purchasers, each selling Holder named in any Registration Statement, and to the underwriter(s), if any, make the Issuer's and the Guarantors' representatives available for discussion of such document and other customary due diligence matters, and include such information in such document prior to the filing thereof as such selling Holders or underwriter(s), if any, reasonably may request;

(vi) in the case of a Shelf Registration Statement, or if a Prospectus is required to be delivered by any Broker-Dealer in the case of an Exchange Offer, make available at reasonable times for inspection by the Initial Purchasers, the managing underwriter(s), if

any, participating in any disposition pursuant to such Registration Statement and one firm of legal counsel or accountant retained by the Initial Purchasers or any of the underwriter(s), all financial and other records, pertinent corporate documents and properties of the Issuer and each of the Guarantors reasonably requested by any such Persons and cause the Issuer's and the Guarantors' officers, directors and employees to supply all information reasonably requested by any such Holder, underwriter, attorney or accountant in connection with such Registration Statement or any post-effective amendment thereto subsequent to the filing thereof and prior to its effectiveness and to participate in meetings with investors to the extent reasonably requested by the managing underwriter(s), if any;

(vii) in the case of a Shelf Registration Statement, if requested by any selling Holders or the underwriter(s), if any, promptly incorporate in any Registration Statement or Prospectus, pursuant to a supplement or post-effective amendment if necessary, such information as such selling Holders and underwriter(s), if any, may reasonably request to have included therein, including, without limitation, information relating to the "Plan of Distribution" of the Transfer Restricted Securities, information with respect to the principal amount of Transfer Restricted Securities being sold to such underwriter(s), the purchase price being paid therefor and any other terms of the offering of the Transfer Restricted Securities to be sold in such offering; and make all required filings of such Prospectus supplement or post-effective amendment as soon as practicable after the Issuer is notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment;

(viii) use its reasonable best efforts to cause the Transfer Restricted Securities covered by the Registration Statement to be rated with the appropriate rating agencies, if so requested by the Holders of a majority in aggregate principal amount of Securities covered thereby or the underwriter(s), if any;

(ix) in the case of a Shelf Registration Statement, furnish to each selling Holder and each of the underwriter(s), if any, without charge, at least one copy of the Registration Statement, as first filed with the Commission, and of each amendment thereto, including financial statements and schedules (without documents incorporated by reference therein or exhibits thereto, unless requested);

(x) deliver to (A) in the case of an Exchange Offer, each Broker-Dealer who submits a written request to the Issuer and (ii) in the case of a Shelf Registration Statement, each selling Holder and each of the underwriter(s), if any, without charge, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such Persons reasonably may request; the Issuer and each of the Guarantors hereby consent to the use of the Prospectus and any amendment or supplement thereto by each of the selling Holders and each of the underwriter(s), if any, in connection with the offering and the sale of the Transfer Restricted Securities covered by the Prospectus or any amendment or supplement thereto;

(xi) in the case of a Shelf Registration Statement, enter into such agreements (including an underwriting agreement), and make such customary representations and

warranties, and take all such other customary and appropriate actions in connection therewith in order to expedite or facilitate the disposition of the Transfer Restricted Securities pursuant to any Shelf Registration Statement contemplated by this Agreement, all to such extent as may be reasonably requested by a majority in aggregate principal amount of Holders of Transfer Restricted Securities covered by such Shelf Registration Statement or underwriter in connection with any sale or resale pursuant to any Shelf Registration Statement contemplated by this Agreement; and whether or not an underwriting agreement is entered into and whether or not the registration is an Underwritten Registration, the Issuer and each of the Guarantors shall:

(A) furnish to the Initial Purchasers, each selling Holder and each underwriter, if any, in such substance and scope as they may reasonably request and as are customarily made by issuers to underwriters in primary underwritten offerings, upon the effectiveness of the Shelf Registration Statement:

(1) a certificate, dated the date of effectiveness of the Shelf Registration Statement signed by (y) the President or any Vice President and (z) a principal financial or accounting officer of the Issuer and each of the Guarantors, confirming, as of the date thereof, the matters set forth in paragraphs (e), (g) and (h) of Section 6 of the Purchase Agreement and such other matters as such parties may reasonably request;

(2) an opinion of counsel for the Issuer and the Guarantors, covering substantially the subject matter of the opinion delivered pursuant to Section 6(a) of the Purchase Agreement, dated the date of effectiveness of the Shelf Registration Statement; and

(3) a customary comfort letter, dated the date of effectiveness of the Shelf Registration Statement, from the Issuer's independent accountants, in the customary form and covering matters of the type customarily requested to be covered in comfort letters by underwriters in connection with primary underwritten offerings, and covering or affirming the matters set forth in the comfort letters delivered pursuant to Section 6(d) of the Purchase Agreement;

(B) set forth in full or incorporate by reference in the underwriting agreement, if any, the indemnification provisions and procedures of Section 8 hereof with respect to all parties to be indemnified pursuant to said Section; and

(C) deliver such other documents and certificates as may be reasonably requested by such parties and as are customarily delivered in similar offerings to evidence compliance with Section 6(c)(xi)(A) hereof and with any customary conditions contained in the underwriting agreement or other agreement entered into by the Issuer or any of the Guarantors pursuant to this Section 6(c)(xi), if any.

If at any time the representations and warranties of the Issuer and the Guarantors contemplated by the certificate furnished pursuant to Section 6(c)(xi)(A)(1) hereof cease

to be true and correct, the Issuer or the Guarantors shall so advise the Initial Purchasers and the underwriter(s), if any, and each selling Holder promptly and, if requested by such Persons, shall confirm such advice in writing;

(xii) in the case of a Shelf Registration Statement, prior to any public offering of Transfer Restricted Securities, use its reasonable best efforts to cooperate with the selling Holders, the underwriter(s), if any, and their respective counsel in connection with the registration and qualification of the Transfer Restricted Securities under the state securities or blue sky laws of such jurisdictions as the selling Holders or underwriter(s), if any, may reasonably request in writing by the time the Shelf Registration Statement is declared effective by the Commission, and use its best efforts to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Transfer Restricted Securities covered by the Shelf Registration Statement; *provided, however*, that neither the Issuer nor the Guarantors shall be required to register or qualify as a foreign corporation where it is not then so qualified or to take any action that would subject it to the service of process in suits or to taxation in any jurisdiction where it is not then so subject;

(xiii) in the case of a Shelf Registration Statement, issue, upon the request of any Holder of Transfer Restricted Securities covered by the Shelf Registration Statement, Exchange Securities having an aggregate principal amount equal to the aggregate principal amount of Transfer Restricted Securities surrendered to the Issuer by such Holder in exchange therefor or being sold by such Holder; such Exchange Securities to be registered in the name of such Holder or in the name of the purchaser(s) of such Securities, as the case may be; in return, the Transfer Restricted Securities held by such Holder shall be surrendered to the Issuer for cancellation;

(xiv) cooperate with the selling Holders and the underwriter(s), if any, to facilitate the timely preparation and delivery of certificates representing Transfer Restricted Securities to be sold and not bearing any restrictive legends; and enable such Transfer Restricted Securities to be in such denominations and registered in such names as the Holders or the underwriter(s), if any, may request at least three Business Days prior to any sale of Transfer Restricted Securities made by such Holders or underwriter(s);

(xv) use its reasonable best efforts to cause the Transfer Restricted Securities covered by the Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter(s), if any, to consummate the disposition of such Transfer Restricted Securities, subject to the proviso contained in Section 6(c)(xii) hereof;

(xvi) if any fact or event contemplated by Section 6(c)(iii)(D) hereof shall exist or have occurred, use its best efforts to prepare a supplement or post-effective amendment to the Registration Statement or related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of Transfer Restricted Securities, the Prospectus will not contain at the time of such delivery any untrue statement of any material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading;

(xvii) provide a CUSIP number for all Securities not later than the effective date of the Registration Statement covering such Securities and provide the Trustee under the Indenture with printed certificates for such Securities which are in a form eligible for deposit with the Depository Trust Company and take all other action necessary to ensure that all such Securities are eligible for deposit with the Depository Trust Company;

(xviii) reasonably cooperate and assist in any filings required to be made with FINRA and in the performance of any due diligence investigation by any underwriter (including any “qualified independent underwriter”) that is required to be retained in accordance with the rules and regulations of FINRA;

(xix) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the Commission, and make generally available to its security holders, as soon as practicable, a consolidated earnings statement meeting the requirements of Rule 158 under the Securities Act (which need not be audited) for the twelve-month period (A) commencing at the end of any fiscal quarter in which Transfer Restricted Securities are sold to underwriters in a firm commitment or best efforts Underwritten Offering or (B) if not sold to underwriters in such an offering, beginning with the first month of the Issuer’s first fiscal quarter commencing after the effective date of the Registration Statement; and

(xx) cause the Indenture to be qualified under the Trust Indenture Act not later than the effective date of the first Registration Statement required by this Agreement, and, in connection therewith, cooperate with the Trustee and the Holders of Securities to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the Trust Indenture Act; and to execute and use its reasonable best efforts to cause the Trustee to execute, all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner.

Each Holder agrees by acquisition of a Transfer Restricted Security that, upon receipt of any notice from the Issuer of (i) the existence of any fact of the kind described in Section 6(c)(iii)(D) hereof or (ii) the commencement a Suspension Period, such Holder will forthwith discontinue disposition of Transfer Restricted Securities pursuant to the applicable Registration Statement until such Holder’s receipt of the copies of the supplemented or amended Prospectus contemplated by Section 6(c)(xvi) hereof, or until it is advised in writing (the “Advice”) by the Issuer that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus. If so directed by the Issuer, each Holder will deliver to the Issuer (at the Issuer’s expense) all copies, other than permanent file copies then in such Holder’s possession, of the Prospectus covering such Transfer Restricted Securities that was current at the time of receipt of such notice. In the event the Issuer shall give any such notice, the time period regarding the effectiveness of such Registration Statement set forth in Section 3 or 4 hereof, as applicable, shall be extended by the number of days during the period from and including the date of the giving of such notice pursuant to

Section 6(c)(iii)(D) or Section 4(c), as the case may be, hereof to and including the date when each selling Holder covered by such Registration Statement shall have received the copies of the supplemented or amended Prospectus contemplated by Section 6(c)(xvi) hereof or shall have received the Advice.

**SECTION 7.**        *Registration Expenses.*

(a) All expenses incident to the Issuer's and the Guarantors' performance of or compliance with this Agreement will be borne by the Issuer and the Guarantors, jointly and severally, regardless of whether a Registration Statement becomes effective, including, without limitation: (i) all registration and filing fees and expenses (including filings made by any Initial Purchasers or Holder with FINRA (and, if applicable, the fees and expenses of any "qualified independent underwriter" and its counsel that may be required by the rules and regulations of FINRA)); (ii) all fees and expenses of compliance with federal securities and state securities or blue sky laws; (iii) all expenses of printing (including printing certificates for the Exchange Securities to be issued in the Exchange Offer and printing of Prospectuses), messenger and delivery services and telephone; (iv) all fees and disbursements of counsel for the Issuer and the Guarantors and, subject to Section 7(b) hereof, the Holders of Transfer Restricted Securities; (v) all application and filing fees in connection with listing the Exchange Securities on a securities exchange or automated quotation system pursuant to the requirements thereof; and (vi) all fees and disbursements of independent certified public accountants of the Issuer and the Guarantors (including the expenses of any special audit and comfort letters required by or incident to such performance).

The Issuer and each of the Guarantors will, in any event, bear its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit and the fees and expenses of any Person, including special experts, retained by the Issuer or the Guarantors.

(b) In connection with any Registration Statement required by this Agreement (including, without limitation, the Exchange Offer Registration Statement and the Shelf Registration Statement), the Issuer and the Guarantors, jointly and severally, will reimburse the Initial Purchasers and the Holders of Transfer Restricted Securities being tendered in the Exchange Offer and/or resold pursuant to the "Plan of Distribution" contained in the Exchange Offer Registration Statement or registered pursuant to the Shelf Registration Statement, as applicable, for the reasonable and documented fees and disbursements of not more than one counsel, who shall be Cahill Gordon & Reindel LLP or such other counsel as may be chosen by the Holders of a majority in principal amount of the Transfer Restricted Securities for whose benefit such Registration Statement is being prepared.

Each Holder shall pay all underwriting discounts and commissions and transfer taxes, if any, relating to the sale or disposition of such Holder's Transfer Restricted Securities pursuant to a Shelf Registration Statement.

**SECTION 8.**        *Indemnification.*

(a) The Issuer and the Guarantors, jointly and severally, agree to indemnify and hold harmless (i) each Holder and (ii) each Person, if any, who controls (within the meaning of

Section 15 of the Securities Act or Section 20 of the Exchange Act) any Holder (any of the Persons referred to in this clause (ii) being hereinafter referred to as a “controlling person”) and (iii) the officers, directors, partners, employees, representatives and agents of any Holder or any controlling person (any Person referred to in clause (i), (ii) or (iii) may hereinafter be referred to as an “Indemnified Holder”) from and against any and all losses, claims, damages, liabilities, judgments, actions and expenses (including, without limitation, and as incurred, reimbursement of all reasonable costs of investigating, preparing, pursuing, settling, compromising, paying or defending any claim or action, or any investigation or proceeding by any governmental agency or body, commenced or threatened, including the reasonable fees and expenses of counsel to any Indemnified Holder), joint or several, directly or indirectly caused by, related to, based upon, arising out of or in connection with any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or Prospectus (or any amendment or supplement thereto), or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided, however*, that the indemnification provided for in this Section 8 does not apply to any loss, claim, damage, liability or expense to the extent arising out of an untrue statement or omission or alleged untrue statement or omission that is made in reliance upon and in conformity with information furnished in writing to the Issuer or the Guarantors by any Holder or any underwriter, expressly for use therein. This indemnity agreement shall be in addition to any liability which the Issuer or any of the Guarantors may otherwise have.

In case any action or proceeding (including any governmental or regulatory investigation or proceeding) shall be brought or asserted against any of the Indemnified Holders with respect to which indemnity may be sought against the Issuer or the Guarantors, such Indemnified Holder (or the Indemnified Holder controlled by such controlling person) shall promptly notify the Issuer and the Guarantors in writing; *provided, however*, that the failure to give such notice shall not relieve the Issuer or any of the Guarantors of its obligations pursuant to this Agreement to the extent it is not materially prejudiced as a result of such failure. If such Indemnified Holder is entitled to indemnification under this Section 8 with respect to any action or proceeding brought by a third party, the Issuer and the Guarantors shall be entitled to assume the defense of any such action or proceeding with counsel reasonably satisfactory to such Indemnified Holder. Upon assumption by the Issuer and the Guarantors of the defense of any such action or proceeding, such Indemnified Holder shall have the right to participate in such action or proceeding and to retain its own counsel but the Issuer and the Guarantors shall not be liable for any legal fees and expenses of other counsel subsequently incurred by the Indemnified Holder in connection with the defense thereof unless (i) the Issuer and the Guarantors have agreed to pay such fees and expenses, (ii) the Issuer and the Guarantors shall have failed to employ counsel satisfactory to such Indemnified Holder in a timely manner or (iii) such Indemnified Holder shall have been advised by counsel that there are actual or potential conflicting interests between the Issuer, the Guarantors and the Indemnified Holder, including situations in which there are one or more legal defenses available to the Indemnified Holder that are inconsistent with or additional to those available to the Issuer and the Guarantors; *provided, however*, that the Issuer and the Guarantors shall not, in connection with any one such action or proceeding or separate but substantially similar or related actions or proceedings arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) at any time for such Indemnified Holders. The Issuer and the Guarantors shall not consent to the terms of any compromise or settlement of any action defended by the

Issuer and the Guarantors in accordance with the foregoing without the prior written consent of the Indemnified Holder unless such compromise or settlement (i) includes an unconditional release of the Indemnified Holder from all liability arising out of such action, claim, litigation or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of the Indemnified Holder.

(b) Each Holder of Transfer Restricted Securities agrees, severally and not jointly, to indemnify and hold harmless the Issuer, the Guarantors and their respective directors, officers of the Issuer and the Guarantors who sign a Registration Statement, and any Person controlling (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Issuer or any of the Guarantors, and the respective officers, directors, partners, employees, representatives and agents of each such Person, to the same extent as the foregoing indemnity from the Issuer and the Guarantors to each of the Indemnified Holders, but only with respect to claims and actions based on information furnished in writing by such Holder expressly for use in any Registration Statement. In case any action or proceeding shall be brought against the Issuer, the Guarantors or their respective directors or officers or any such controlling person in respect of which indemnity may be sought against a Holder of Transfer Restricted Securities, such Holder shall have the rights and duties given the Issuer and the Guarantors, and the Issuer, the Guarantors, their respective directors and officers and any such controlling person shall have the rights and duties given to each Holder by the preceding paragraph.

(c) If the indemnification provided for in this Section 8 is unavailable to an indemnified party under Section 8(a) or (b) hereof (other than by reason of exceptions provided in those Sections) in respect of any losses, claims, damages, liabilities, judgments, actions or expenses referred to therein, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative benefits received by the Issuer and the Guarantors, on the one hand, and the Holders, on the other hand, from the Initial Placement (which in the case of the Issuer and the Guarantors shall be deemed to be equal to the total gross proceeds to the Issuer and the Guarantors from the Initial Placement), the amount of Additional Interest which did not become payable as a result of the filing of the Registration Statement resulting in such losses, claims, damages, liabilities, judgments actions or expenses, and such Registration Statement, or if such allocation is not permitted by applicable law, the relative fault of the Issuer and the Guarantors, on the one hand, and the Holders, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative fault of the Issuer, on the one hand, and of the Indemnified Holder, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuer or any of the Guarantors, on the one hand, or the Indemnified Holders, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in the second paragraph of Section 8(a) hereof, any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim.

The Issuer, the Guarantors and each Holder of Transfer Restricted Securities agree that it would not be just and equitable if contribution pursuant to this Section 8(c) were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, liabilities or expenses referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, none of the Holders (and the related Indemnified Holders) shall be required to contribute, in the aggregate, any amount in excess of the amount by which the total discount received by such Holder with respect to the Initial Securities exceeds the amount of any damages which such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The Holders' obligations to contribute pursuant to this Section 8(c) are several in proportion to the respective principal amount of Initial Securities held by each of the Holders hereunder and not joint.

SECTION 9.           *Rule 144A.*

The Issuer and each of the Guarantors hereby agree with each Holder, for so long as any Transfer Restricted Securities remain outstanding, to make available to any Holder or beneficial owner of Transfer Restricted Securities in connection with any sale thereof and any prospective purchaser of such Transfer Restricted Securities from such Holder or beneficial owner, the information required by Rule 144A(d)(4) under the Securities Act in order to permit resales of such Transfer Restricted Securities pursuant to Rule 144A under the Securities Act.

SECTION 10.          *Participation in Underwritten Registrations.*

No Holder may participate in any Underwritten Registration hereunder unless such Holder (a) agrees to sell such Holder's Transfer Restricted Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and (b) completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents required under the terms of such underwriting arrangements.

SECTION 11.          *Selection of Underwriters.*

The Holders of Transfer Restricted Securities covered by the Shelf Registration Statement who desire to do so may sell such Transfer Restricted Securities in an Underwritten Offering. In any such Underwritten Offering, the investment banker(s) and managing underwriter(s) that will administer such offering will be selected by the Holders of a majority in aggregate principal amount of the Transfer Restricted Securities included in such offering; *provided, however*, that such investment banker(s) and managing underwriter(s) must be reasonably satisfactory to the Issuer.

SECTION 12. *Miscellaneous.*

(a) *Remedies.* The Issuer, each of the Guarantors and the Initial Purchasers hereby agree that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agree to waive the defense in any action for specific performance that a remedy at law would be adequate.

(b) *No Inconsistent Agreements.* The Issuer and each of the Guarantors will not on or after the date of this Agreement enter into any agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Neither the Issuer nor any of the Guarantors have previously entered into any agreement granting any registration rights with respect to its securities to any Person. The rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of an Issuer's or any of the Guarantors' securities under any agreement in effect on the date hereof.

(c) *Adjustments Affecting the Securities.* The Issuer will not take any action, or permit any change to occur, with respect to the Securities that would materially and adversely affect the ability of the Holders to Consummate any Exchange Offer.

(d) *Amendments and Waivers.* The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given unless the Issuer has (i) in the case of Section 5 hereof and this Section 12(d)(i), obtained the written consent of Holders of all outstanding Transfer Restricted Securities and (ii) in the case of all other provisions hereof, obtained the written consent of Holders of a majority of the outstanding principal amount of Transfer Restricted Securities (excluding any Transfer Restricted Securities held by the Issuer or its respective Affiliates). Notwithstanding the foregoing, a waiver or consent to departure from the provisions hereof that relates exclusively to the rights of Holders whose securities are being tendered pursuant to the Exchange Offer and that does not affect directly or indirectly the rights of other Holders whose securities are not being tendered pursuant to such Exchange Offer may be given by the Holders of a majority of the outstanding principal amount of Transfer Restricted Securities being tendered or registered; *provided, however*, that, with respect to any matter that directly or indirectly affects the rights of the Initial Purchasers hereunder, the Issuer shall obtain the written consent of the Representative with respect to which such amendment, qualification, supplement, waiver, consent or departure is to be effective.

(e) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail (registered or certified, return receipt requested), telex, telecopier, or air courier guaranteeing overnight delivery:

- (i) if to a Holder, at the address set forth on the records of the Registrar under the Indenture, with a copy to the Registrar under the Indenture; and

(ii) if to the Issuer or the Guarantors:

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, NY 13203  
Attention: General Counsel  
Telecopy: (315) 475-9616

(iii) with a copy to (which shall not constitute notice or service of process pursuant to this Agreement):

Akerman Senterfitt LLP  
335 Madison Avenue, 26<sup>th</sup> Floor  
New York, NY 10017  
Attention: Wayne Wald, Esq.  
Telecopy: (212) 880-8965  
E-mail: wayne.wald@akerman.com

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee at the address specified in the Indenture.

(f) *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including, without limitation, and without the need for an express assignment, subsequent Holders of Transfer Restricted Securities; *provided, however*, that this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and to the extent such successor or assign acquired Transfer Restricted Securities from such Holder. Nothing herein shall be deemed to permit any assignment, transfer or other disposition of Transfer Restricted Securities in violation of the terms of the Purchase Agreement or the Indenture.

(g) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(h) *Headings.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICTS OF LAW RULES THEREOF.

(j) *Severability.* In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(k) *Entire Agreement.* This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the registration rights granted by the Issuer with respect to the Transfer Restricted Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

*[The remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CARROLS RESTAURANT GROUP, INC.

By: /s/ William E. Myers  
Name: William E. Myers  
Title: VP, Secretary and General Counsel

CARROLS CORPORATION

By: /s/ William E. Myers  
Name: William E. Myers  
Title: VP, Secretary and General Counsel

CARROLS LLC

By: /s/ William E. Myers  
Name: William E. Myers  
Title: VP, Secretary and General Counsel

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The foregoing Registration Rights Agreement is hereby confirmed and accepted as of the date first above written:

WELLS FARGO SECURITIES, LLC,  
as Representative of the Initial Purchasers

By: /s/ David R. Keatley

Name: David R. Keatley

Title: Managing Director

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SCHEDULE I

GUARANTORS

<u>Name</u>	<u>Jurisdiction of Incorporation / Organization</u>	<u>Chief Executive Office Location</u>
Carrols Corporation	Delaware	968 James St. Syracuse, NY 13203
Carrols LLC	Delaware	968 James St. Syracuse, NY 13203

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SECOND LIEN SECURITY AGREEMENT

By

CARROLS RESTAURANT GROUP, INC.,  
as Issuer

and

THE GUARANTORS PARTY HERETO

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Collateral Agent

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Dated as of May 30, 2012

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EXHIBIT 8	Form of Perfection Certificate

## SECOND LIEN SECURITY AGREEMENT

This SECOND LIEN SECURITY AGREEMENT dated as of May 30, 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, this “Agreement”) made by CARROLS RESTAURANT GROUP, INC., a Delaware corporation (the “Issuer”), and the Guarantors from time to time party hereto (the “Guarantors”), as pledgors, assignors and debtors (the Issuer, together with the Guarantors, in such capacities and together with any successors in such capacities, the “Pledgors,” and each, a “Pledgor”), in favor of The Bank of New York Mellon Trust Company, N.A., in its capacity as collateral agent pursuant to the Indenture (as hereinafter defined), as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the “Collateral Agent”).

### R E C I T A L S :

A. The Issuer, the Guarantors and The Bank of New York Mellon Trust Company, N.A., in its capacity as trustee under the Indenture (the “Trustee”), in connection with the execution and delivery of this Agreement, entered into that certain indenture, dated as of May 30, 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Indenture”; which term shall also include and refer to any additional issuance of notes under the Indenture), pursuant to which the Issuer is issuing \$150,000,000 aggregate principal of 11.25% Senior Secured Second Lien Notes due 2018 (together with the Exchange Notes and any Additional Notes, the “Notes”).

B. From time to time after the date hereof, the Issuer may, subject to the terms and conditions of the Indenture and the Security Documents, incur Permitted Additional Pari Passu Obligations (including Additional Notes issued under the Indenture), that the Issuer desires to secure by the Pledged Collateral and Mortgaged Property on a pari passu basis with the Notes.

C. Each Guarantor has, pursuant to the Indenture, among other things, unconditionally guaranteed the Secured Obligations.

D. The Issuer and each Guarantor will receive substantial benefits from the issuance of the Notes and each is, therefore, willing to enter into this Agreement.

E. This Agreement is given by each Pledgor in favor of the Collateral Agent for the benefit of the Secured Parties (as hereinafter defined) to secure the payment and performance of all of the Secured Obligations.

F. It is a condition to the issuance of the Notes that each Pledgor execute and deliver the applicable Security Documents, including this Agreement.

## A G R E E M E N T :

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Pledgor and the Collateral Agent hereby agree as follows:

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

##### SECTION 1.1. Definitions.

(a) Unless otherwise defined herein or in the Indenture, capitalized terms used herein that are defined in the UCC shall have the meanings assigned to them in the UCC; provided that in any event, the following terms shall have the meanings assigned to them in the UCC:

“Accounts”; “Bank”; “Chattel Paper”; “Commercial Tort Claim”; “Commodity Account”; “Commodity Contract”; “Commodity Intermediary”; “Documents”; “Electronic Chattel Paper”; “Entitlement Order”; “Equipment”; “Financial Asset”; “Fixtures”; “Goods”; “Inventory”; “Letter-of-Credit Rights”; “Letters of Credit”; “Money”; “Payment Intangibles”; “Proceeds”; “Promissory Notes”; “Records”; “Securities Account”; “Securities Intermediary”; “Security Entitlement”; “Supporting Obligations”; and “Tangible Chattel Paper.”

(b) Terms used but not otherwise defined herein that are defined in the Indenture shall have the meanings given to them in the Indenture.

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

“Account Debtor” shall mean each person who is obligated on a Receivable or Supporting Obligation related thereto.

“Additional Pari Passu Agent” shall mean the Person appointed to act as trustee, agent or representative for the holders of Permitted Additional Pari Passu Obligations pursuant to any Additional Pari Passu Agreement.

“Additional Pari Passu Agreement” shall mean the indenture, credit agreement or other agreement under which any Permitted Additional Pari Passu Obligations (other than Additional Notes) are incurred and any notes or other instruments representing such Permitted Additional Pari Passu Obligations.

“Additional Pari Passu Joinder Agreement” shall mean an agreement substantially in the form of Exhibit 6 hereto.

“Agreement” shall have the meaning assigned to such term in the Preamble hereof.

“Burger King Corporation” shall mean Burger King Corporation, a Florida corporation.

“Burger King Rights” shall mean the rights (if any) of Burger King Corporation under each Franchise Agreement pursuant to which Burger King Corporation shall be entitled to: (a) prior written notice of any sale of all or substantially all of the Capital Interests of the Issuer or any Restricted Subsidiary; (b) a right of first refusal to purchase all or substantially all of the Capital Interests of the Issuer or any Restricted Subsidiary or of all or substantially all of the assets of a restaurant subject to a Franchise Agreement in connection with a sale thereof; (c) prior approval of any sale of all or substantially all of the Capital Interests of the Issuer or any Restricted Subsidiary; and (d) prior written consent to the sale, assignment, transfer, conveyance or give-away of substantially all of the assets of any restaurant subject to a Franchise Agreement; in each case to the extent set forth in a legally binding Franchise Agreement.

“Capital Interests” in any person means any and all shares, interests (including preferred interests, restricted stock interests and stock options, warrants and other convertible instruments), participations or other equivalents in the equity interest (however designated) in such person and any rights (other than debt securities convertible into an equity interest), warrants or options to acquire an equity interest in such person

“Collateral Support” shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Pledged Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

“Commodity Account Control Agreement” shall mean a control agreement in a form that is reasonably satisfactory to the Collateral Agent establishing the Collateral Agent’s Control with respect to any Commodity Account.

“Contracts” shall mean, collectively, with respect to each Pledgor, all sale, service, performance, equipment or property lease contracts, agreements and grants and all other contracts, agreements or grants (in each case, whether written, or third party or intercompany), between such Pledgor and any third party, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof.

“Control” shall mean (i) in the case of each Deposit Account, “control,” as such term is defined in Section 9-104 of the UCC, (ii) in the case of any Security Entitlement, “control,” as such term is defined in Section 8-106 of the UCC, and (iii) in the case of any Commodity Contract, “control,” as such term is defined in Section 9-106 of the UCC.

“Control Agreements” shall mean, collectively, all Deposit Account Control Agreements, Securities Account Control Agreements and the Commodity Account Control Agreements.

“Copyrights” shall mean, collectively, with respect to each Pledgor, all copyrights (whether statutory or common law, whether established or registered in the United States or any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished) and all copyright registrations and applications made by such Pledgor, in each case, whether now owned or hereafter created or acquired by or assigned to such Pledgor, together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor’s use of such copyrights, (ii) reissues, renewals, continuations and extensions thereof and amendments thereto, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

“Copyright Security Agreement” shall mean an agreement substantially in the form of Exhibit 3 hereto.

“Credit Agreement” shall mean that certain credit agreement, dated as of May 30, 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time) among the Issuer as borrower under the Credit Agreement, the guarantors party thereto, the agent and lenders party thereto and Wells Fargo Bank, National Association, as First Lien Agent.

“Default” or “Event of Default” shall mean a “default” or “event of default” under the Indenture or under any Additional Pari Passu Agreement.

“Deposit Account Control Agreement” shall mean an agreement in a form that is reasonably satisfactory to the Collateral Agent establishing the Collateral Agent’s Control with respect to any Deposit Account.

“Deposit Accounts” shall mean, collectively, with respect to each Pledgor, (i) all “deposit accounts” as such term is defined in the UCC and in any event shall include all accounts and sub-accounts relating to any of the foregoing accounts and (ii) all cash, funds, checks, notes and instruments from time to time on deposit in any of the accounts or sub-accounts described in clause (i) of this definition.

“Distributions” shall mean, collectively, with respect to each Pledgor, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity) or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Securities, from time to time received, receivable or otherwise distributed to such Pledgor in respect of or in exchange for any or all of the Pledged Securities or Intercompany Notes.

“Excluded Property” shall mean

(a) any rights or interest in any lease, contract, license or license agreement covering personal property or Real Property of the Issuer or any Guarantor, so long as under the terms of such lease, contract, license or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein to Collateral Agent is

prohibited (or would render such lease, contract, license or license agreement cancelled, invalid or unenforceable) and such prohibition has not been or is not waived or the consent of the other party to such lease, contract, license or license agreement has not been or is not otherwise obtained; *provided* that, this exclusion shall in no way be construed to apply if any such prohibition is unenforceable under the UCC or other applicable law or so as to limit, impair or otherwise affect Collateral Agent's unconditional continuing security interests in and liens upon any rights or interests of the Issuer or Guarantors in or to monies due or to become due to the Issuer or Guarantor under any such lease, contract, license or license agreement (including any Receivables);

(b) assets owned by Issuer or any Guarantor on the Issue Date or thereafter acquired and any proceeds thereof that are subject to a Lien securing a Purchase Money Debt (as defined in the Indenture) or Capital Lease Obligation (as defined in the Indenture) permitted to be incurred pursuant to the provisions of the Indenture to the extent and for so long as the contract or other agreement in which such Lien is granted (or the documentation providing for such Purchase Money Debt or Capital Lease Obligation) validly prohibits the creation of any other Lien on such assets and proceeds (other than to the extent that such prohibition would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction and other than to the extent all necessary consents to creation, attachment and perfection of the Collateral Agent's Liens thereon have been obtained);

(c) any shares entitled to vote (within the meaning of Treasury Regulation Section 1.956-2) of any direct or indirect Subsidiary of the Issuer that is a "controlled foreign corporation" in excess of sixty-five (65%) percent of the total combined voting power of all of the issued and outstanding Capital Interests entitled to vote in such Subsidiary;

(d) any Capital Interests of any Subsidiary of the Issuer to the extent necessary for such Subsidiary not to be subject to any requirement pursuant to Rule 3-16 or Rule 3-10 of Regulation S-X under the Exchange Act, due to the fact that such Subsidiary's Capital Interests secures the Notes or Note Guarantees, to file separate financial statements with the Securities and Exchange Commission (or any other governmental agency);

(e) any intent to use trademark application to the extent and for so long as creation of a security interest therein would result in the loss of any material rights therein, provided that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent to use trademark application shall not be considered Excluded Property;

(f) any Real Property leased by the Issuer or any Guarantor;

(g) the Real Properties located at 968 James Street, Syracuse, New York, a parcel of land adjacent to 12213 Olean Road, Yorkshire, New York, a parcel of land adjacent to 3002 East Avenue, Central Square, New York and 3055 Mahoning Avenue, Warren Ohio;

(h) any Franchise Agreements that prohibit security interests thereon without consent of the franchisor; and

(i) any cash or cash equivalents held in deposit or securities accounts designated for cash collateralizing the Credit Agreement;

provided, however, that Excluded Property shall not include any Proceeds, products, substitutions or replacements of any Excluded Property referred to in clause (a), (b), (c), (d), (e) or (f) (unless such Proceeds, substitutions or replacements would constitute Excluded Property referred to in clauses (a), (b), (c), (d), (e) or (f)).

“First Lien Agent” shall mean Wells Fargo Bank, National Association, in its capacity as administrative agent under the Credit Agreement, and its permitted successors and assigns.

“First Lien Security Agreement” shall mean that certain security agreement dated as of May 30, 2012 among the Issuer as borrower under the Credit Agreement, the guarantors party thereto and the First Lien Agent.

“Franchise Agreements” shall mean all of the franchise agreements to which the Issuer or any of its Restricted Subsidiaries is a party as a franchisee, whether entered into on, prior to or following the Issue Date, as the same may be from time to time amended, modified, supplemented or restated.

“General Intangibles” shall mean, collectively, with respect to each Pledgor, all “general intangibles,” as such term is defined in the UCC, of such Pledgor and, in any event, shall include (i) all of such Pledgor’s rights, title and interest in, to and under all Contracts and insurance policies (including all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for damages or other relief pursuant to or in respect of any Contract), (ii) all know-how and warranties relating to any of the Pledged Collateral or the Mortgaged Property, (iii) any and all other rights, claims, choses-in-action and causes of action of such Pledgor against any other person and the benefits of any and all collateral or other security given by any other person in connection therewith, (iv) all guarantees, endorsements and indemnifications on, or of, any of the Pledged Collateral or any of the Mortgaged Property, (v) all lists, books, records, correspondence, ledgers, printouts, files (whether in printed form or stored electronically), tapes and other papers or materials containing information relating to any of the Pledged Collateral or any of the Mortgaged Property, including all customer or tenant lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, appraisals, recorded knowledge, surveys, studies, engineering reports, test reports, manuals, standards, processing standards, performance standards, catalogs, research data, computer and automatic machinery software and programs and the like, field repair data, accounting information pertaining

to such Pledgor's operations or any of the Pledged Collateral or any of the Mortgaged Property and all media in which or on which any of the information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data, (vi) all licenses, consents, permits, variances, certifications, authorizations and approvals, however characterized, now or hereafter acquired or held by such Pledgor, including building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation and (vii) all rights to reserves, deferred payments, deposits, refunds, indemnification of claims and claims for tax or other refunds against any Governmental Authority.

"Goodwill" shall mean, collectively, with respect to each Pledgor, the goodwill connected with such Pledgor's business including all goodwill connected with (i) the use of and symbolized by any Trademark or Intellectual Property License with respect to any Trademark in which such Pledgor has any interest, (ii) all know-how, trade secrets, customer and supplier lists, proprietary information, inventions, methods, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any person, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets which relate to such goodwill and (iii) all product lines of such Pledgor's business.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantors" shall have the meaning assigned to such term in the Preamble hereof.

"Impairment" shall have the meaning assigned to such term in Section 9.1 hereof.

"Initial Purchasers" shall mean Wells Fargo Securities, LLC, Jefferies & Company, Inc., Raymond James & Associates, Inc. and Rabo Securities USA, Inc.

"Instruments" shall mean, collectively, with respect to each Pledgor, all "instruments," as such term is defined in Article 9, rather than Article 3, of the UCC, and shall include all promissory notes, drafts, bills of exchange or acceptances.

"Intellectual Property Collateral" shall mean, collectively, the Patents, Trademarks, Copyrights, Intellectual Property Licenses and Goodwill.

"Intellectual Property Licenses" shall mean, collectively, with respect to each Pledgor, all license and distribution agreements with, and covenants not to sue, any other party with respect to any Patent, Trademark or Copyright or any other patent, trademark or copyright, whether such Pledgor is a licensor or licensee, distributor or distributee under any such license or

distribution agreement, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements or violations thereof, (iii) rights to sue for past, present and future infringements or violations thereof and (iv) other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights or any other patent, trademark or copyright.

“Intercompany Notes” shall mean, with respect to each Pledgor, all intercompany notes described in Schedule 10 to the Perfection Certificate and intercompany notes hereafter acquired by such Pledgor and all certificates, instruments or agreements evidencing such intercompany notes, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof to the extent permitted pursuant to the terms hereof.

“Intercreditor Agreement” shall mean that certain intercreditor agreement, dated as of May 30, 2012 among Wells Fargo Bank, National Association, as First Lien Agent and The Bank of New York Mellon Trust Company, N.A., as Second Lien Collateral Agent, as it may be amended, restated, supplemented or modified from time to time.

“Intervening Creditor” shall have the meaning assigned to such term in Section 9.1 hereof.

“Investment Property” shall mean a security, whether certificated or uncertificated, Security Entitlement, Securities Account, Commodity Contract or Commodity Account, excluding, however, the Securities Collateral.

“Issue Date” shall mean May 30, 2012.

“Leases” shall mean any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

“Lien” means, with respect to any property or other asset, any mortgage, deed of trust, deed to secure debt, pledge, hypothecation, assignment, deposit arrangement, security interest, lien (statutory or otherwise), charge, easement, encumbrance or other security agreement on or with respect to such property or other asset (including, without limitation, any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

“Mortgage Instrument” shall mean any mortgage, deed of trust or deed to secure debt executed by a Pledgor in favor of the Collateral Agent, for the benefit of the Secured Parties, as the same may be amended, modified, extended, restated, replaced, or supplemented from time to time.

“Mortgaged Property” means, collectively, (i) each Real Property listed on Schedule 7(a) of the Perfection Certificate, (ii) each Real Property, if any, encumbered by a Mortgage Instrument delivered after the Issue Date pursuant to Section 3.4 and 4.10 and (iii) any other interest in Real Property that secures the Credit Agreement.

“Note Guarantee” means any guarantee of the Notes by any Guarantor pursuant to the Indenture.

“Patents” shall mean, collectively, with respect to each Pledgor, all patents issued or assigned to, and all patent applications and registrations made by, such Pledgor (whether established or registered or recorded in the United States or any other country or any political subdivision thereof), together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor’s use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof.

“Patent Security Agreement” shall mean an agreement substantially in the form of Exhibit 4 hereto.

“Perfection Certificate” means that certain perfection certificate to be executed and delivered by the Issuer in connection with the execution and delivery of the Credit Agreement and the Indenture, to be dated on or about the Issue Date and substantially in the form attached hereto as Exhibit 8.

“Pledge Amendment” shall have the meaning assigned to such term in Section 5.1 hereof.

“Pledged Collateral” shall have the meaning assigned to such term in Section 2.1 hereof.

“Pledged Securities” shall mean, collectively, with respect to each Pledgor, in each case other than Excluded Property, (i) all issued and outstanding Equity Interests of each issuer set forth on Schedules 9(a) and 9(b) to the Perfection Certificate as being owned by such Pledgor (other than Equity Interests of the Unrestricted Subsidiaries (as defined in the Indenture) on the Issue Date) and all options, warrants, rights, agreements and additional Equity Interests of whatever class of any such issuer acquired by such Pledgor (including by issuance), together with all rights, privileges, authority and powers of such Pledgor relating to such Equity Interests in each such issuer or under any Organization Document of each such issuer, and the certificates, instruments and agreements representing such Equity Interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such Equity Interests, (ii) all Equity Interests of any issuer (other than Equity Interests of the Unrestricted Subsidiaries (as defined in the Indenture) on the Issue Date), which Equity Interests are hereafter acquired

by such Pledgor (including by issuance) and all options, warrants, rights, agreements and additional Equity Interests of whatever class of any such issuer acquired by such Pledgor (including by issuance), together with all rights, privileges, authority and powers of such Pledgor relating to such Equity Interests or under any Organization Document of any such issuer, and the certificates, instruments and agreements representing such Equity Interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such Equity Interests, from time to time acquired by such Pledgor in any manner, and (iii) all Equity Interests issued in respect of the Equity Interests referred to in clause (i) or (ii) upon any consolidation or merger of any issuer of such Equity Interests.

“Pledgor” shall have the meaning assigned to such term in the Preamble hereof.

“Real Property” shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Receivables” shall mean all (i) Accounts, (ii) Chattel Paper, (iii) Payment Intangibles, (iv) General Intangibles, (v) Instruments and (vi) all other rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, regardless of how classified under the UCC together with all of Pledgors’ rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Records relating thereto.

“Secured Obligations” means any principal, premium, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker’s acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under any of (i) the Indenture, the Notes (other than any Additional Notes except to the extent constituting Permitted Additional Pari Passu Obligations), the Note Guarantees and the Security Documents and (ii) any Additional Pari Passu Agreement and other documentation relating to any other Permitted Additional Pari Passu Obligations; *provided* that no obligations in respect of Permitted Additional Pari Passu Obligations (other than Additional Notes) shall constitute “Secured Obligations” unless the Additional Pari Passu Agent for the holders of such Permitted Additional Pari Passu Obligations has executed an Additional Pari Passu Joinder Agreement in the form of Exhibit 6 hereto and has become a party to the Intercreditor Agreement.

“Secured Parties” shall mean, collectively, the Collateral Agent, the Trustee, the Holders, each Additional Pari Passu Agent, each holder of Permitted Additional Pari Passu Obligations that constitute Secured Obligations and the other Persons the Secured Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Security Documents (other than the Intercreditor Agreement).

“Securities Account Control Agreement” shall mean an agreement in a form that is reasonably satisfactory to the Collateral Agent establishing the Collateral Agent’s Control with respect to any Securities Account.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Securities Collateral” shall mean, collectively, the Pledged Securities, the Intercompany Notes and the Distributions.

“Subsidiary” means, with respect to any person, any corporation, limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Voting Interests therein is, at the time, directly or indirectly, owned by such Person and/or one or more Subsidiaries of such Person.

“Title Company” shall mean any title insurance company as shall be retained by any Pledgor and reasonably acceptable to the Collateral Agent.

“Trademarks” shall mean, collectively, with respect to each Pledgor, all trademarks (including service marks), slogans, logos, certification marks, trade dress, uniform resource locations (URL’s), domain names, corporate names and trade names, whether registered or unregistered, owned by or assigned to such Pledgor and all registrations and applications for the foregoing (whether statutory or common law and whether established or registered in the United States or any other country or any political subdivision thereof), together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor’s use of any trademarks, (ii) reissues, continuations, extensions and renewals thereof and amendments thereto, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present and future infringements thereof.

“Trademark Security Agreement” shall mean an agreement substantially in the form of Exhibit 5 hereto.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent’s and the Secured Parties’ security interest in any item or portion of the Pledged Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“Voting Interests” means, with respect to any person, securities of any class or classes of Capital Interests in such person entitling the holders thereof generally to vote on the election of members of the board of directors or comparable body of such person.

SECTION 1.2. Interpretation. The rules of interpretation specified in the Indenture (including Section 1.4 thereof) shall be applicable to this Agreement.

SECTION 1.3. Resolution of Drafting Ambiguities. Each Pledgor acknowledges and agrees that it was represented by counsel in connection with the execution and delivery hereof, that it and its counsel reviewed and participated in the preparation and negotiation hereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (i.e., the Collateral Agent) shall not be employed in the interpretation hereof.

SECTION 1.4. Perfection Certificate. The Collateral Agent, each Secured Party and each Pledgor agree that the Perfection Certificate and all descriptions of Pledged Collateral and Mortgaged Property, schedules, amendments and supplements thereto are and shall at all times remain a part of this Agreement.

## ARTICLE II

### GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2.1. Grant of Security Interest. As collateral security for the payment and performance in full of all the Secured Obligations, each Pledgor hereby pledges and grants to the Collateral Agent for the benefit of the Secured Parties, a lien on and security interest in all of the right, title and interest of such Pledgor in, to and under the following property, wherever located, and whether now existing or hereafter arising or acquired from time to time (collectively, the “Pledged Collateral”):

- (i) all Accounts;
- (ii) all Equipment, Goods, Inventory and Fixtures;
- (iii) all Documents, Instruments, Promissory Notes and Chattel Paper;
- (iv) all Letters of Credit and Letter-of-Credit Rights;
- (v) all Securities Collateral;
- (vi) all Investment Property;
- (vii) all Intellectual Property Collateral;

- (viii) the Commercial Tort Claims described on Schedule 12 to the Perfection Certificate;
- (ix) all General Intangibles;
- (x) all Money and all Deposit Accounts;
- (xi) all Supporting Obligations;
- (xii) any assets of Pledgor that now or hereafter come into the possession, custody, or control of Collateral Agent (or its agent or designee);
- (xiii) all books and records relating to the Pledged Collateral; and
- (xiv) to the extent not covered by clauses (i) through (xiii) of this sentence, all other personal property of such Pledgor, whether tangible or intangible, and all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Pledgor from time to time with respect to any of the foregoing.

Notwithstanding anything to the contrary contained in clauses (i) through (xiii) above, the security interest created by this Agreement shall not extend to, and the term "Pledged Collateral" shall not include, any Excluded Property and from and after the Issue Date, no Pledgor shall permit to become effective in any document creating, governing or providing for any permit, license or agreement a provision that would prohibit the creation of a Lien on such permit, license or agreement in favor of the Collateral Agent unless such Pledgor believes, in its reasonable judgment, that such prohibition is usual and customary in transactions of such type, subject to the Burger King Rights.

In addition, notwithstanding anything herein to the contrary, in the event that Rule 3-10 or Rule 3-16 of Regulation S-X under the Securities Act requires (or is replaced with another rule or regulation, or any other law, rule or regulation is adopted, which would require) the filing with the Securities and Exchange Commission (or any other governmental agency) of separate financial statements of any Pledgor that is a Subsidiary of the Issuer due to the fact that such Subsidiary's Capital Interests or other securities of such Pledgor secure the Notes and/or Permitted Additional Pari Passu Obligations affected thereby, then the Capital Interests and such other securities of such Pledgor will automatically be deemed not to be part of the Pledged Collateral securing the Notes and/or Permitted Additional Pari Passu Obligations affected thereby but only to the extent necessary to not be subject to such requirement, only for so long as required to not be subject to such requirement and only with respect to Secured Obligations affected thereby.

In the event that Rule 3-10 or Rule 3-16 of Regulation S-X under the Securities Act is amended, modified or interpreted by the Securities and Exchange Commission to permit (or is replaced with another rule or regulation, or any other law, rule or regulation is adopted,

which would permit) such Pledgor's Capital Interests and other securities to secure the Notes and/or Permitted Additional Pari Passu Obligations in excess of the amount then pledged without the filing with the Securities and Exchange Commission (or any other governmental agency) of separate financial statements of such Pledgor, then the Capital Interests and other securities of such Pledgor will automatically be deemed to be a part of the Pledged Collateral for the relevant Notes and/or Permitted Additional Pari Passu Obligations but only to the extent necessary to not be subject to any such financial statement requirement.

In accordance with the limitations set forth in the two immediately preceding paragraphs, the Pledged Collateral for the Notes and/or Permitted Additional Pari Passu Obligations will include such Pledgor's Capital Interests only to the extent that the applicable value of such Capital Interests (on a Subsidiary-by-Subsidiary basis) is less than 20% of the aggregate principal amount of the Notes outstanding. Following the date hereof, however, the portion of the Capital Interests of Subsidiaries constituting Pledged Collateral may increase or decrease as described above.

SECTION 2.2. Filings. Each Pledgor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Pledged Collateral, including (i) whether such Pledgor is an organization, the type of organization and any organizational identification number issued to such Pledgor, (ii) any financing or continuation statements or other documents without the signature of such Pledgor where permitted by law, including the filing of a financing statement describing the Pledged Collateral as "all assets now owned or hereafter acquired by the Pledgor or in which Pledgor otherwise has rights" and (iii) in the case of a financing statement filed as a fixture filing or covering Pledged Collateral constituting minerals or the like to be extracted or timber to be cut, a sufficient description of the real property to which such Pledged Collateral relates. Each Pledgor agrees to provide all information described in the immediately preceding sentence to the Collateral Agent promptly upon request by the Collateral Agent.

(a) Each Pledgor hereby ratifies its authorization for the Collateral Agent to file in any relevant jurisdiction any financing statements relating to the Pledged Collateral if filed prior to the date hereof.

(b) Each Pledgor hereby further authorizes the Collateral Agent to file filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country), including the Copyright Security Agreement, the Patent Security Agreement and the Trademark Security Agreement, or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by such Pledgor hereunder, without the signature of such Pledgor, and naming such Pledgor, as debtor, and the Collateral Agent, as secured party.

(c) Notwithstanding the foregoing authorizations, in no event shall the Collateral Agent be obligated to prepare or file any financing statements whatsoever, or to maintain

the perfection of the security interest granted hereunder. Each Pledgor agrees to prepare, record and file, at its own expense, financing statements (and continuation statements when applicable) with respect to the Collateral now existing or hereafter created meeting the requirements of applicable state law in such manner and in such jurisdictions as are necessary to perfect and maintain perfected the Collateral, and to deliver a file stamped copy of each such financing statement or other evidence of filing to the Collateral Agent. Neither the Trustee nor the Collateral Agent shall be under any obligation whatsoever to file any such financing or continuation statements or to make any other filing under the UCC in connection with this Agreement.

SECTION 2.3. Second Priority Nature of Liens. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent pursuant to this Agreement shall be a second priority lien on and security interest in the Pledged Collateral and the exercise of any right or remedy by the Collateral Agent hereunder is subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control. Notwithstanding anything herein to the contrary, prior to the Discharge of First Lien Obligations (as defined in the Intercreditor Agreement), the requirements of this Agreement to deliver Pledged Collateral and any certificates, instruments or Documents in relation thereto to the Collateral Agent shall be deemed satisfied by delivery of such Pledged Collateral and such certificates, instruments or Documents in relation thereto to the First Lien Agent (as bailee and non-fiduciary agent for the Collateral Agent).

Each Pledgor agrees that, in the event any Pledgor, pursuant to the First Lien Security Agreement, takes any action to grant or perfect a Lien in favor of the First Lien Agent in any assets (other than assets described in clause (i) of the definition of Excluded Property), such Pledgor shall also take such action to grant or perfect a Lien (subject to the Intercreditor Agreement) in favor of the Collateral Agent to secure the Secured Obligations without request of the Collateral Agent, including with respect to any property and real property in which the First Lien Agent directs a Pledgor to grant or perfect a Lien or take such other action under the First Lien Security Agreement.

### ARTICLE III

#### PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES; USE OF PLEDGED COLLATERAL

SECTION 3.1. Delivery of Certificated Securities Collateral. Each Pledgor represents and warrants that all certificates, agreements or instruments representing or evidencing the Securities Collateral in existence on the date hereof, have been delivered to the First Lien Agent for the benefit of the Collateral Agent in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank, and that the Collateral Agent has a perfected second priority security interest therein. Each Pledgor hereby agrees that

all certificates, agreements or instruments representing or evidencing Securities Collateral acquired by such Pledgor after the date hereof shall promptly (but in any event within thirty (30) days after receipt thereof by such Pledgor) be delivered to and held by or on behalf of the Collateral Agent pursuant hereto and the Intercreditor Agreement. The requirements in the preceding two sentences shall not apply (i) to the extent that the face value of the Securities Collateral (other than any Subsidiary Equity Interests) does not exceed \$1,000,000 in the aggregate for all Pledgors or (ii) to the Intercompany Notes. All certificated Securities Collateral shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Collateral Agent. Subject to the Burger King Rights, the Collateral Agent shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to endorse, assign or otherwise transfer to or to register in the name of the Collateral Agent or any of its nominees or endorse for negotiation any or all of the Securities Collateral, without any indication that such Securities Collateral is subject to the security interest hereunder. In addition, upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the right at any time to exchange certificates representing or evidencing Securities Collateral for certificates of smaller or larger denominations.

SECTION 3.2. Perfection of Uncertificated Securities Collateral. Each Pledgor represents and warrants that the Collateral Agent has a perfected second priority security interest in all uncertificated Pledged Securities pledged by it hereunder that are in existence on the date hereof. Each Pledgor hereby agrees that if any of the Pledged Securities are at any time not evidenced by certificates of ownership, then each applicable Pledgor shall, to the extent permitted by applicable law, (i) cause the issuer to execute and deliver to the Collateral Agent an acknowledgment of the pledge of such Pledged Securities substantially in the form of Exhibit 1 hereto, (ii) if necessary or desirable to perfect a security interest in such Pledged Securities, cause such pledge to be recorded on the equityholder register or the books of the issuer, execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give the Collateral Agent the right to transfer such Pledged Securities under the terms hereof, and (iii) after the occurrence and during the continuance of any Event of Default if required by the First Lien Agent, (A) cause the Organization Documents of each such issuer that is a Subsidiary of the Issuer to be amended to provide that such Pledged Securities shall be treated as “securities” for purposes of the UCC and (B) cause such Pledged Securities of such issuers to become certificated and delivered to the Collateral Agent in accordance with the provisions of Section 3.1.

SECTION 3.3. Financing Statements and Other Filings; Maintenance of Perfected Security Interest. Each Pledgor represents and warrants that all financing statements, agreements, instruments and other documents necessary to perfect the security interest granted by it to the Collateral Agent in respect of the Pledged Collateral have been delivered to the Collateral Agent in completed and, to the extent necessary, duly executed form for filing in each governmental, municipal or other office specified in Schedule 6 to the Perfection Certificate. Each Pledgor agrees that at the sole cost and expense of the Pledgors, such Pledgor will maintain the security interest created by this Agreement in the Pledged Collateral as a perfected second priority security interest subject only to Permitted Collateral Liens and the Burger King Rights and file all UCC-3 continuation statements necessary to continue the perfection of the security interest created by this Agreement.

SECTION 3.4. Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Collateral Agent's security interest in the Pledged Collateral, each Pledgor represents and warrants (as to itself) as follows and agrees, in each case at such Pledgor's own expense, to take the following actions with respect to the following Pledged Collateral:

(a) Instruments and Tangible Chattel Paper. As of the date hereof, no amounts payable under or in connection with any of the Pledged Collateral are evidenced by any Instrument or Tangible Chattel Paper other than such Instruments and Tangible Chattel Paper listed in Schedule 10 to the Perfection Certificate. Subject to Section 3.1, each Instrument and each item of Tangible Chattel Paper listed in Schedule 10 to the Perfection Certificate not constituting Excluded Property has been properly endorsed, assigned and delivered to the Collateral Agent, accompanied by instruments of transfer or assignment duly executed in blank. At any time such requirements apply, the applicable Pledgor shall give notice thereof to the Collateral Agent in accordance with Section 13.2 of the Indenture and the Collateral Agent shall not be charged with any knowledge that such requirements are applicable unless such notice has been given. If any amount then payable under or in connection with any of the Pledged Collateral shall be evidenced by any Instrument or Tangible Chattel Paper, and such amount, together with all amounts payable evidenced by any Instrument or Tangible Chattel Paper not previously delivered to the Collateral Agent exceeds \$1,000,000 in the aggregate for all Pledgors, the Pledgor acquiring such Instrument or Tangible Chattel Paper shall promptly (but in any event within thirty (30) days after receipt thereof), subject to Section 3.1, endorse, assign and deliver the same to the Administrative Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank.

(b) Deposit Accounts. As of the date hereof, no Pledgor has any Deposit Accounts other than the accounts listed in Schedule 13 to the Perfection Certificate. Within 45 days after the date hereof (or such longer period of time as agreed to by the First Lien Agent in its sole discretion and so communicated to the Collateral Agent in writing as soon as practicable), the Collateral Agent will have a second priority security interest in each such Deposit Account (other than (i) Deposit Accounts established solely as payroll and other zero balance Accounts, (ii) other Deposit Accounts, so long as at any time the balance in any such Account does not exceed \$50,000 and the aggregate balance in all such Accounts does not exceed \$50,000 and (iii) other than the Deposit Account in which funds or cash equivalents are deposited to cash collateralize the entire commitment under the Credit Agreement), which security interest will be, upon the execution and delivery of a Deposit Account Control Agreement with respect thereto perfected by Control. No Pledgor shall hereafter establish and maintain any Deposit Account (other than (i) Deposit Accounts established solely as payroll and other zero balance Accounts, (ii) other Deposit Accounts, so long as at any time the balance in any such Account does not exceed \$50,000 and the aggregate balance in all such Accounts does not exceed \$50,000 and (iii)

other than the Deposit Account in which funds or cash equivalents are deposited to cash collateralize the entire commitment under the Credit Agreement) with any Bank unless such Bank and such Pledgor shall have duly executed and delivered to the Collateral Agent a Deposit Account Control Agreement with respect to such Deposit Account. At any time such requirements apply, the applicable Pledgor shall give notice thereof to the Collateral Agent in accordance with Section 13.2 of the Indenture and the Collateral Agent shall not be charged with any knowledge that such requirements are applicable unless such notice has been given. The Collateral Agent agrees with each Pledgor that the Collateral Agent shall not give any instructions directing the disposition of funds from time to time credited to any Deposit Account or withhold any withdrawal rights from such Pledgor with respect to funds from time to time credited to any Deposit Account unless an Event of Default has occurred and is continuing. Each Pledgor agrees that once the Collateral Agent sends an instruction or notice to a Bank exercising its Control over any Deposit Account such Pledgor shall not give any instructions or orders with respect to such Deposit Account including, without limitation, instructions for distribution or transfer of any funds in such Deposit Account. No Pledgor shall grant Control of any Deposit Account to any person other than the Collateral Agent and the First Lien Agent.

(c) Securities Accounts and Commodity Accounts. (a) As of the date hereof, no Pledgor has any Securities Accounts or Commodity Accounts other than those listed in Schedule 13 to the Perfection Certificate. Within 45 days after the date hereof (or such longer period of time as agreed to by the First Lien Agent in its sole discretion and so communicated to the Collateral Agent in writing as soon as practicable), the Collateral Agent will have a second priority security interest in each such Securities Account and Commodity Account (other than (i) Securities Accounts and Commodities Accounts established solely as payroll and other zero balance Accounts and (ii) other Commodities Accounts and Securities Accounts, so long as at any time the balance in any such Account does not exceed \$50,000 and the aggregate balance in all such Accounts does not exceed \$50,000), which security interest will be, in the case of Securities Accounts, upon the execution and delivery of a Securities Account Control Agreement with respect thereto, perfected by Control. No Pledgor shall hereafter establish and maintain any Securities Account or Commodity Account (other than (i) Securities Accounts and Commodities Accounts established solely as payroll and other zero balance Accounts and (ii) other Commodities Accounts and Securities Accounts, so long as at any time the balance in any such Account does not exceed \$50,000 and the aggregate balance in all such Accounts does not exceed \$50,000) with any Securities Intermediary or Commodity Intermediary unless such Securities Intermediary or Commodity Intermediary, as the case may be, and such Pledgor shall have duly executed and delivered a Control Agreement with respect to such Securities Account or Commodity Account, as the case may be. At any time such requirements apply, the applicable Pledgor shall give notice thereof to the Collateral Agent in accordance with Section 13.2 of the Indenture and the Collateral Agent shall not be charged with any knowledge that such requirements are applicable unless such notice has been given. Each Pledgor shall accept any cash and Investment Property in trust for the benefit of the Collateral Agent and within five (5) Business Days of actual receipt thereof, deposit any and all cash and Investment Property received by it into a

Deposit Account or Securities Account subject to Collateral Agent's Control. The Collateral Agent agrees with each Pledgor that the Collateral Agent shall not give any Entitlement Orders or instructions or directions to any issuer of uncertificated securities, Securities Intermediary or Commodity Intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by such Pledgor, unless an Event of Default has occurred and is continuing or, after giving effect to any such investment and withdrawal rights, would occur. Each Pledgor agrees that once the Collateral Agent sends an instruction or notice to a Securities Intermediary or Commodity Intermediary exercising its Control over any Securities Account and Commodity Account such Pledgor shall not give any instructions or orders with respect to such Securities Account and Commodity Account including, without limitation, instructions for investment, distribution or transfer of any Investment Property or financial asset maintained in such Securities Account or Commodity Account. No Pledgor shall grant Control over any Investment Property to any person other than the Collateral Agent and the First Lien Collateral Agent. As between the Collateral Agent and the Pledgors, the Pledgors shall bear the investment risk with respect to the Investment Property and Pledged Securities, and the risk of loss of, damage to, or the destruction of the Investment Property and Pledged Securities, whether in the possession of, or maintained as a Security Entitlement or deposit by, or subject to the Control of, the Collateral Agent, a Securities Intermediary, a Commodity Intermediary, any Pledgor or any other person.

(d) Electronic Chattel Paper and Transferable Records. As of the date hereof, no amount under or in connection with any of the Pledged Collateral is evidenced by any Electronic Chattel Paper or any "transferable record" (as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction) other than such Electronic Chattel Paper and transferable records listed in Schedule 10 to the Perfection Certificate. If any amount payable under or in connection with any of the Pledged Collateral shall be evidenced by any Electronic Chattel Paper or any transferable record, the Pledgor acquiring such Electronic Chattel Paper or transferable record shall promptly notify the Collateral Agent thereof and shall take such action as is reasonably necessary to vest in the Collateral Agent control of such Electronic Chattel Paper under Section 9-105 of the UCC or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The requirement in the preceding sentence shall not apply to the extent that such amount, together with all amounts payable evidenced by Electronic Chattel Paper or any transferable record in which the Collateral Agent has not been vested control within the meaning of the statutes described in the immediately preceding sentence, does not exceed \$3,000,000 in the aggregate for all Pledgors. At any time such requirement applies, the applicable Pledgor shall give notice thereof to the Collateral Agent in accordance with Section 13.2 of the Indenture and the Collateral Agent shall not be charged with any knowledge that such requirements are applicable unless such notice has been given. The Pledgors may make alterations to the Electronic Chattel Paper or transferable record, provided that such alterations are permitted under Section 9-105 of

the UCC or Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act, as determined by the Issuer, and unless an Event of Default has occurred and is continuing.

(e) Letter-of-Credit Rights. If any Pledgor is at any time a beneficiary under a Letter of Credit now or hereafter issued, such Pledgor shall promptly (but in any event within thirty (30) days after receipt thereof by such Pledgor) notify the Collateral Agent thereof and such Pledgor shall, either (i) use commercially reasonable efforts to arrange for the issuer and any confirmer of such Letter of Credit to consent to an assignment to the Collateral Agent of the proceeds of any drawing under the Letter of Credit or (ii) arrange for the Collateral Agent to become the transferee beneficiary of such Letter of Credit, with the Collateral Agent agreeing, in each case, that the proceeds of any drawing under the Letter of Credit are to be applied as provided in the Indenture. The actions in the preceding sentence shall not be required to the extent that the amount of any such Letter of Credit, together with the aggregate amount of (a) all other Letters of Credit for which the actions described above in clause (i) and (ii) have not been taken and (b) all Commercial Tort Claims in which the Collateral Agent does not have a perfected security interest and (c) all motor vehicles (and any such other Equipment covered by certificates of title or ownership) as to which any Pledgor has not delivered a certificate of title or ownership to the Collateral Agent, does not exceed \$5,000,000 in the aggregate for all Pledgors. At any time such action is required, the applicable Pledgor shall give notice thereof to the Collateral Agent in accordance with Section 13.2 of the Indenture and the Collateral Agent shall not be charged with any knowledge that such requirement is applicable unless such notice has been given.

(f) Commercial Tort Claims. As of the date hereof, each Pledgor hereby represents and warrants that it holds no Commercial Tort Claims other than those listed in Schedule 12 to the Perfection Certificate. If any Pledgor shall at any time hold or acquire a Commercial Tort Claim, such Pledgor shall promptly, and in any event within thirty (30) days, notify the Collateral Agent in writing signed by such Pledgor of the brief details thereof and grant to the Collateral Agent in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement, with such writing to be in such form and substance as is reasonably necessary to grant a security interest in such Commercial Tort Claim. The requirement in the preceding sentence shall not apply to the extent that the amount of such Commercial Tort Claim, together with the amount of (a) all other Commercial Tort Claims held by any Pledgor in which the Collateral Agent does not have a perfected security interest, (b) all Letters of Credit (except to the extent constituting Supporting Obligations) in which the Collateral Agent does not have a perfected security interest and (c) all motor vehicles (and any such other Equipment covered by certificates of title or ownership) as to which any Pledgor has not delivered a certificate of title or ownership to the Collateral Agent, does not exceed \$5,000,000 in the aggregate for all Pledgors. At any time such requirement applies, the applicable Pledgor shall give notice thereof to the Collateral Agent in accordance with Section 13.2 of the Indenture and the Collateral Agent shall not be charged with any knowledge that such requirement is applicable unless such notice has been given.

(g) Each Pledgor shall deliver to the Collateral Agent originals of the certificates of title or ownership for the motor vehicles (and any other Equipment covered by certificates of title or ownership) owned by it, with the Collateral Agent listed as lienholder therein. Such requirement shall not apply to the extent the aggregate amount of (a) all motor vehicles (and any such other Equipment covered by certificates of title or ownership) as to which any Pledgor has not delivered a certificate of title or ownership to the Collateral Agent, (b) all Commercial Tort Claims in which the Collateral Agent does not have a perfected security interest and (c) all Letters of Credit (except to the extent constituting Supporting Obligations) in which the Collateral Agent does not have a perfected security, does not exceed \$5,000,000 in the aggregate for all Pledgors.

(h) After-Acquired Collateral. Unless otherwise provided, upon the acquisition by the Issuer or any Guarantor after the date hereof (1) any after-acquired assets, including, but not limited to, any after-acquired Real Property or any Equipment or Fixtures which constitute accretions, additions or technological upgrades to the Equipment or Fixtures or any working capital assets that, in any such case, form part of the Collateral, or (2) any replacement assets, the Issuer or such Pledgor shall execute and deliver, (i) with regard to any Real Property that is acquired for the purpose of serving as a restaurant, mortgages and related documentation and opinions as specified in Section 4.10 hereof within 365 days of the date of acquisition, (ii) with regard to any other Real Property, mortgages and related documentation and opinions as specified in Section 4.10 within 180 days of the date of acquisition (or such later date as any applicable regulatory approvals have been obtained) and (iii) to the extent required by the Security Documents, any information, documentation, financing statements or other certificates as may be necessary to vest in the Collateral Agent a perfected security interest, subject only to Permitted Liens and the Burger King Rights, in such after-acquired Property (other than Excluded Property and Collateral that the Issuer or such Guarantor is not required to take actions to perfect) and to have such after-acquired Property added to the Collateral, and thereupon all provisions of the Indenture, the Security Documents and the Intercreditor Agreement relating to the Collateral shall be deemed to relate to such after-acquired Property to the same extent and with the same force and effect.

SECTION 3.5. Joinder of Additional Guarantors. The Pledgors shall cause each Subsidiary of the Issuer which, from time to time, after the date hereof shall be required to pledge any assets to the Collateral Agent for the benefit of the Secured Parties pursuant to the provisions of the Indenture, to execute and deliver to the Collateral Agent (a) a joinder agreement to this Agreement in the form of Exhibit 7 hereto and (b) a Perfection Certificate, in each case, within thirty (30) days of the date on which it was acquired or created and, in each case, upon such execution and delivery, such Subsidiary shall constitute a "Pledgor" for all purposes hereunder with the same force and effect as if originally named as a Pledgor herein. The execution and delivery of such joinder agreement shall not require the consent of any Pledgor hereunder. The rights and obligations of each Pledgor hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor and Pledgor as a party to this Agreement.

SECTION 3.6. Supplements; Further Assurances. Each Pledgor shall take such further actions, and execute and/or deliver to the Collateral Agent such additional financing statements, amendments, assignments, agreements, supplements, powers and instruments, as is reasonably necessary in order to create, perfect, preserve and protect the security interest in and lien on the Pledged Collateral and the Mortgaged Property as provided herein and the rights and interests granted to the Collateral Agent hereunder, to carry into effect the purposes hereof or better to assure and confirm the validity, enforceability and priority of the Collateral Agent's security interest in and lien on the Pledged Collateral and Mortgaged Property or permit the Collateral Agent to exercise and enforce its rights, powers and remedies hereunder and the other Security Documents with respect to any Pledged Collateral and Mortgaged Property, including the filing of financing statements, continuation statements and other documents (including this Agreement) under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interest created hereby and the execution and delivery of Control Agreements, in form reasonably satisfactory to the Collateral Agent and in such offices (including the United States Patent and Trademark Office and the United States Copyright Office) wherever required by law to perfect, continue and maintain the validity, enforceability and priority of the security interest in and lien on the Pledged Collateral and Mortgaged Property as provided herein and the other Security Documents and to preserve the other rights and interests granted to the Collateral Agent hereunder and the other Security Documents, as against third parties, with respect to the Pledged Collateral and Mortgaged Property. Without limiting the generality of the foregoing, each Pledgor shall make, execute, endorse, acknowledge, file or refile and/or deliver to the Collateral Agent from time to time such lists, schedules, descriptions and designations of the Pledged Collateral and Mortgaged Property, copies of warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments as the Collateral Agent may reasonably request. If an Event of Default has occurred and is continuing, the Collateral Agent may institute and maintain, in its own name or in the name of any Pledgor, such suits and proceedings as the Collateral Agent may be advised by counsel shall be necessary or expedient to prevent any impairment of the security interest in or lien on or the perfection thereof in the Pledged Collateral and Mortgaged Property. All of the foregoing shall be at the sole cost and expense of the Pledgors.

#### ARTICLE IV

##### REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Pledgor represents, warrants and covenants as follows:

SECTION 4.1. Title. Except for the security interest granted to the Collateral Agent for the benefit of the Secured Parties pursuant to this Agreement and Permitted Liens, such Pledgor owns and has all material rights and, as to Pledged Collateral acquired by it from time to time after the date hereof, will own and have rights in each item of Pledged Collateral

pledged by it hereunder, free and clear of any and all Liens other than the Permitted Collateral Liens and the Burger King Rights. In addition, no Liens exist on the Securities Collateral, other than as permitted by Section 4.12 of the Indenture and with respect to the Burger King Rights.

SECTION 4.2. Validity of Security Interest. The security interest in and Lien on the Pledged Collateral granted to the Collateral Agent for the benefit of the Secured Parties hereunder constitutes (a) a legal and valid security interest in all the Pledged Collateral securing the payment and performance of the Secured Obligations, and (b) subject to the filings and other actions described in Schedule 6 to the Perfection Certificate (to the extent required to be listed on the schedules to the Perfection Certificate as of the date this representation is made or deemed made), a perfected security interest in all the Pledged Collateral. The security interest and Lien granted to the Collateral Agent for the benefit of the Secured Parties pursuant to this Agreement in and on the Pledged Collateral will at all times constitute a perfected, continuing security interest therein, prior to all other Liens on the Pledged Collateral except for Permitted Collateral Liens and the Burger King Rights.

SECTION 4.3. Defense of Claims; Transferability of Pledged Collateral. Each Pledgor shall, at its own cost and expense, defend title to the Pledged Collateral pledged by it hereunder and the security interest therein and Lien thereon granted to the Collateral Agent and the priority thereof against all claims and demands of all persons, at its own cost and expense, at any time claiming any interest therein adverse to the Collateral Agent or any other Secured Party other than Permitted Collateral Liens and the Burger King Rights. There is no agreement (other than with respect to Permitted Collateral Liens and the Burger King Rights and the First Lien Credit Agreement and the Intercreditor Agreement), order, judgment or decree, and no Pledgor shall enter into any agreement (other than with respect to Permitted Collateral Liens and the First Lien Credit Agreement and the Intercreditor Agreement) or take any other action, that would restrict the transferability of any of the Pledged Collateral or otherwise impair or conflict with such Pledgor's obligations or the rights of the Collateral Agent hereunder.

SECTION 4.4. Other Financing Statements. It has not filed, nor authorized any third party to file (nor will there be), any valid or effective financing statement (or similar statement, instrument of registration or public notice under the law of any jurisdiction) covering or purporting to cover any interest of any kind in the Pledged Collateral, except such as have been filed in favor of the First Lien Agent or in favor of the Collateral Agent pursuant to this Agreement or in favor of any holder of a Permitted Collateral Lien with respect to such Lien or financing statements or public notices relating to the termination statements listed on Schedule 8 to the Perfection Certificate. No Pledgor shall execute, authorize or permit to be filed in any public office any financing statement (or similar statement, instrument of registration or public notice under the law of any jurisdiction) relating to any Pledged Collateral, except financing statements and other statements and instruments filed or to be filed in respect of and covering the security interests granted by such Pledgor to the holders of the Permitted Liens.

SECTION 4.5. Location of Inventory and Equipment. It shall not move any Equipment or Inventory with a fair market value in excess of \$3,000,000 in the aggregate to any location, other than any location that is listed in the relevant Schedules to the Perfection Certificate,

unless it shall have given the Collateral Agent not less than 30 days' prior written notice of its intention so to do, clearly describing such new location and confirming the attachment of the Lien and security interest created by this Agreement to the Collateral located in the new location, and confirming further that each Pledgor has executed and filed any instruments or statements necessary to create, preserve or perfect the Collateral Agent's security interest in such relocated Collateral; provided that in no event shall any Equipment or Inventory be moved to any location outside of the continental United States.

SECTION 4.6. Due Authorization and Issuance. All of the Pledged Securities existing on the date hereof have been, and to the extent any Pledged Securities are hereafter issued, such Pledged Securities will be, upon such issuance, duly authorized, validly issued and fully paid and non-assessable to the extent applicable. To the knowledge of the Pledgors, there is no amount or other obligation owing by any Pledgor to any issuer of the Pledged Securities in exchange for or in connection with the issuance of the Pledged Securities or any Pledgor's status as a partner or a member of any issuer of the Pledged Securities.

SECTION 4.7. Consents, etc. In the event that the Collateral Agent desires to exercise any remedies, voting or consensual rights or attorney-in-fact powers set forth in this Agreement or the other Security Documents and determines it necessary to obtain any approvals or consents of any Governmental Authority or any other person therefor, then, upon the reasonable request of the Collateral Agent, such Pledgor agrees to use its commercially reasonable efforts to assist and aid the Collateral Agent to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers.

SECTION 4.8. Pledged Collateral and Mortgaged Property. All information set forth herein, including the schedules hereto, and all information contained in any documents, schedules and lists heretofore delivered to any Secured Party, including the Perfection Certificate and the schedules thereto, in connection with this Agreement, in each case, relating to the Pledged Collateral and Mortgaged Property, is accurate and complete in all material respects. The Pledged Collateral and Mortgaged Property described on the schedules to the Perfection Certificate constitutes all of the property of such type of Pledged Collateral and Mortgaged Property owned or held by the Pledgors (other than Excluded Property).

SECTION 4.9. Insurance. In the event that the proceeds of any insurance claim are paid to any Pledgor after the Collateral Agent has exercised its right to foreclose after an Event of Default, such Net Cash Proceeds shall, subject to the Intercreditor Agreement, be held in trust for the benefit of the Collateral Agent and promptly after receipt thereof shall be paid to the Collateral Agent for application in accordance with Section 6.10 of the Indenture.

SECTION 4.10. Post-Closing Collateral Matters. The Issuer and each applicable Pledgor shall comply with the following requirements with respect to post-closing collateral matters:

(a) Real Property Collateral. Within ninety (90) days after the Issue Date (or as soon as practical thereafter using commercially reasonable efforts), the Collateral

Agent shall have received, in form and substance substantially similar to those delivered to the First Lien Agent in connection with the creation of a first priority, perfected Lien on such Real Property in accordance with the Credit Agreement:

(i) fully executed and notarized Mortgage Instrument encumbering the Mortgaged Properties as to properties owned by the Pledgors;

(ii) maps or plats of an as-built survey of the sites of the Mortgaged Properties; it being agreed that the surveys in existence on the Issue Date and provided to the Collateral Agent pursuant to the terms of this clause (ii) (along with a certificate of an officer of the Issuer in form and substance substantially similar to that delivered to the First Lien Agent in connection with the creation of a first priority, perfected Lien on such Real Property in accordance with the Credit Agreement) are satisfactory so long as substantially similar to the surveys delivered to the First Lien Agent under the Credit Agreement;

(iii) an environmental questionnaire executed by an officer of the Issuer with respect to all owned Mortgaged Properties, along with third-party environmental reviews of all owned Mortgaged Properties, including but not limited to Phase I environmental assessments; it being agreed that the Phase I environmental assessments in existence on the Issue Date and provided to the Administrative Agent pursuant to the terms of this clause (iii) are satisfactory;

(iv) to the extent delivered to the First Lien Agent in connection with the creation of a first priority, perfected Lien on such Mortgaged Properties in accordance with the Credit Agreement, opinions of counsel to the Pledgors for each jurisdiction in which the Mortgaged Properties are located in form and substance substantially similar to those delivered to the First Lien Agent; and

(v) to the extent available, zoning letters from each municipality or other governmental authority for each jurisdiction in which the Mortgaged Properties are located.

(b) Account Control Agreements. Within forty-five (45) days after the Issue Date (or such longer period of time as agreed to by the First Lien Agent in its sole discretion), the Collateral Agent shall have received Deposit Account Control Agreements and Securities and Commodities Account Control Agreements required to be delivered in accordance with Sections 3.4(b) and (c), as well as opinions of counsel to the Pledgors regarding the creation of perfected security interests in such Accounts as are in form and substance substantially similar to those delivered to the First Lien Agent in accordance with the Credit Agreement to the extent so delivered.

Neither the Collateral Agent nor the Trustee undertakes any responsibility whatsoever to determine whether any of the foregoing covenants in this Section 4.10 have been satisfied, and neither shall have any liability whatsoever arising out of the failure of the Issuer or any of the Pledgors to satisfy such post-closing requirements, other than to take receipt of the Officers' Certificate described in the next sentence. Within 210 days of the date hereof, the Issuer shall deliver to the Collateral Agent and the Trustee an Officers' Certificate

(upon which the Trustee and Collateral Agent shall be fully protected in relying), certifying that (i) the deliverables indicated above in this Section 4.10 are substantially similar in form and substance to those delivered to the First Lien Agent (other than the subordination provisions contained therein) and (ii) the post-closing covenants set forth in Section 4.10 have been satisfied.

SECTION 4.11. Notice of Changes. No Pledgor shall effect any change in (i) its legal name, (ii) in the location of its chief executive office, (iii) in its identity or organizational structure, (iv) in its Federal Taxpayer Identification Number or organizational identification number, if any, or (v) in its jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), until (A) it shall have given the Collateral Agent not less than 15 days' prior written notice (in the form of an Officers' Certificate), or such lesser notice period agreed to by the Collateral Agent, of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Collateral Agent may reasonably request and (B) it shall have taken all action reasonably necessary to maintain the perfection and priority of the security interest of the Collateral Agent for the benefit of the Secured Parties in the Pledged Collateral, if applicable.

SECTION 4.12. No Impairment of the Security Interests. No Pledgor shall take any action, or knowingly or negligently omit to take any action, which action or omission might or would have the result of materially impairing the security interest with respect to the Pledged Collateral or Mortgaged Property (for the avoidance of doubt, (i) Permitted Collateral Liens and (ii) the entry by the Issuer or its Subsidiaries into Franchise Agreements that provide for the Burger King Rights shall not, in each case, be deemed to materially impair the security interest).

## ARTICLE V

### CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL

SECTION 5.1. Pledge of Additional Securities Collateral. Each Pledgor shall, upon obtaining any Pledged Securities or Intercompany Notes of any person, accept the same in trust for the benefit of the Collateral Agent and, in the case of any Pledged Securities or Intercompany Notes (other than Loan Party Intercompany Notes) having a face value in excess of \$3,000,000 in the aggregate at any one time outstanding or any Equity Interests of a Subsidiary (other than an Unrestricted Subsidiary) promptly (but in any event within thirty (30) days after receipt thereof) deliver to the Collateral Agent a pledge amendment, duly executed by such Pledgor, in substantially the form of Exhibit 2 hereto (each, a "Pledge Amendment"), and, subject to the Intercreditor Agreement, the certificates and other documents required under Section 3.1 and Section 3.2 hereof in respect of the additional Pledged Securities or Intercompany Notes which are to be pledged pursuant to this Agreement, and confirming the attachment of the Lien hereby created on and in respect of such additional Pledged Securities or Intercompany Notes. Each Pledgor hereby authorizes the Collateral Agent to attach each Pledge Amendment to this

Agreement and agrees that all Pledged Securities or Intercompany Notes listed on any Pledge Amendment delivered to the Collateral Agent shall for all purposes hereunder be considered Pledged Collateral.

SECTION 5.2. Voting Rights; Distributions; etc.

(a) So long as no Event of Default shall have occurred and be continuing:

(i) Each Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes hereof, the Indenture or any other document evidencing the Secured Obligations.

(ii) Each Pledgor shall be entitled to receive and retain, and to utilize free and clear of the Lien hereof, any and all Distributions, but only if and to the extent made in accordance with the provisions of the Indenture; provided, however, that any and all such Distributions consisting of rights or interests in the form of securities shall, subject to the Intercreditor Agreement and Section 5.1 hereof, be forthwith delivered to the Collateral Agent to hold as Pledged Collateral and shall, if received by any Pledgor, be received in trust for the benefit of the Collateral Agent, be segregated from the other property or funds of such Pledgor and be promptly (but in any event within five days after receipt thereof) delivered to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary endorsement).

(b) So long as no Event of Default shall have occurred and be continuing, the Collateral Agent shall be deemed without further action or formality to have granted to each Pledgor all necessary consents relating to voting rights and shall, if necessary, upon written request of any Pledgor and at the sole cost and expense of the Pledgors, from time to time execute and deliver (or cause to be executed and delivered) to such Pledgor all such instruments as such Pledgor may reasonably request in order to permit such Pledgor to exercise the voting and other rights which it is entitled to exercise pursuant to Section 5.2(a)(i) hereof and to receive the Distributions which it is authorized to receive and retain pursuant to Section 5.2(a)(ii) hereof.

(c) Upon the occurrence and during the continuance of any Event of Default and upon notice from the Collateral Agent acting at the direction of the holders of a majority of the outstanding Secured Obligations and subject to the Burger King Rights:

(i) All rights of each Pledgor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 5.2(a)(i) hereof shall immediately cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights.

(ii) All rights of each Pledgor to receive Distributions which it would otherwise be authorized to receive and retain pursuant to Section 5.2(a)(ii) hereof shall immediately cease and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to receive and hold as Pledged Collateral such Distributions.

(d) Each Pledgor shall, at its sole cost and expense, from time to time execute and deliver to the Collateral Agent appropriate instruments in order to permit the Collateral Agent to exercise the voting and other rights which it may be entitled to exercise pursuant to Section 5.2(c)(i) hereof and to receive all Distributions which it may be entitled to receive under Section 5.2(c)(ii) hereof.

(e) All Distributions which are received by any Pledgor contrary to the provisions of Section 5.2(a)(ii) hereof shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Pledgor and shall immediately be paid over to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary endorsement).

SECTION 5.3. Defaults, etc. Each Pledgor hereby represents and warrants that (i) such Pledgor is not in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Pledgor is a party relating to the Pledged Securities pledged by it, (ii) no Securities Collateral pledged by such Pledgor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Pledgor by any person with respect thereto, and (iii) as of the date hereof, there are no certificates, instruments, documents or other writings (other than the Organization Documents that have been delivered to the First Lien Agent and certificates representing such Pledged Securities that have been delivered to the Collateral Agent) which evidence any Pledged Securities of such Pledgor.

SECTION 5.4. Certain Agreements of Pledgors As Issuers and Holders of Equity Interests.

(a) In the case of each Pledgor which is an issuer of Securities Collateral, such Pledgor agrees to be bound by the terms of this Agreement relating to the Securities Collateral issued by it and will comply in all material respects with such terms insofar as such terms are applicable to it.

(b) In the case of each Pledgor which is a partner, shareholder or member, as the case may be, in a partnership, limited liability company or other entity, such Pledgor hereby consents to the extent required by the applicable Organization Document to the pledge by each other Pledgor, pursuant to the terms hereof, of the Pledged Securities in such partnership, limited liability company or other entity and, upon the occurrence and during the continuance of an Event of Default and subject to the Burger King Rights, to the transfer of such Pledged Securities to the Collateral Agent or its nominee and to the substitution of the Collateral Agent or its nominee as a substituted partner, shareholder or member in such partnership, limited liability company or other entity with all the rights, powers and duties of a general partner, limited partner, shareholder or member, as the case may be.

## CERTAIN PROVISIONS CONCERNING INTELLECTUAL PROPERTY COLLATERAL

SECTION 6.1. Grant of Intellectual Property License. For the purpose of enabling the Collateral Agent, during the continuance of an Event of Default, to exercise rights and remedies under Article IX hereof at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Pledgor hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license to use, assign, license or sublicense any of the Intellectual Property Collateral now owned or hereafter acquired by such Pledgor, wherever the same may be located. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof.

SECTION 6.2. Protection of Collateral Agent's Security. On a continuing basis, each Pledgor shall, at its sole cost and expense, (i) promptly following its becoming aware thereof, notify<sup>1</sup> the Collateral Agent of any adverse determination in any proceeding or the institution of any proceeding in any federal, state or local court or administrative body or in the United States Patent and Trademark Office or the United States Copyright Office regarding any Intellectual Property Collateral, such Pledgor's right to register such Intellectual Property Collateral or its right to keep and maintain such registration in full force and effect to the extent that such Intellectual Property Collateral exceeds \$1,000,000, (ii) maintain all Intellectual Property Collateral as presently used and operated, (iii) not permit to lapse or become abandoned any Intellectual Property Collateral, and not settle or compromise any pending or future litigation or administrative proceeding with respect to any such Intellectual Property Collateral, in either case except as shall be consistent with commercially reasonable business judgment, (iv) upon such Pledgor obtaining knowledge thereof, promptly notify the Collateral Agent in writing of any event which may be reasonably expected to materially and adversely affect the value or utility of any Intellectual Property Collateral or the rights and remedies of the Collateral Agent in relation thereto including a levy or threat of levy or any legal process against any Intellectual Property Collateral, (v) not license any Intellectual Property Collateral other than licenses entered into by such Pledgor in, or incidental to, the ordinary course of business, or amend or permit the amendment of any of the licenses in a manner that materially and adversely affects the right to receive payments thereunder, or in any manner that would materially impair the value of any Intellectual Property Collateral or the Lien on and security interest in the Intellectual Property Collateral created therein hereby and (vi) diligently keep adequate records respecting all Intellectual Property Collateral.

<sup>1</sup> This should have same \$ thresholds as other notice provisions in indenture

SECTION 6.3. After-Acquired Property. If any Pledgor shall at any time after the date hereof (i) obtain any rights to any additional Intellectual Property Collateral or (ii) become entitled to the benefit of any additional Intellectual Property Collateral or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Intellectual Property Collateral, or any improvement on any Intellectual Property Collateral, or if any intent-to use trademark application is no longer subject to clause (d) of the definition of Excluded Property, the provisions hereof shall automatically apply thereto and any such item enumerated in the preceding clause (i) or (ii) shall automatically constitute Intellectual Property Collateral as if such would have constituted Intellectual Property Collateral at the time of execution hereof and be subject to the Lien and security interest created by this Agreement without further action by any party. Each Pledgor shall promptly (and in any event within 30 days) provide to the Collateral Agent written notice of any of the foregoing and confirm the attachment of the Lien and security interest created by this Agreement to any rights described in clauses (i) and (ii) above by execution of an instrument in form reasonably necessary to grant such a security interest to the Collateral Agent and the filing of any instruments or statements as shall be reasonably necessary to create, preserve, protect or perfect the Collateral Agent's security interest in such Intellectual Property Collateral. Further, each Pledgor agrees to modify this Agreement by amending Schedules 11(a) and 11(b) to the Perfection Certificate to include any Intellectual Property Collateral of such Pledgor acquired or arising after the date hereof.

SECTION 6.4. Litigation. Unless there shall occur and be continuing any Event of Default, each Pledgor shall have the right to commence and prosecute in its own name, as the party in interest, for its own benefit and at the sole cost and expense of the Pledgors, such applications for protection of the Intellectual Property Collateral and suits, proceedings or other actions to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value or other damage as are necessary to protect the Intellectual Property Collateral. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent shall have the right but shall in no way be obligated to file applications for protection of the Intellectual Property Collateral and/or bring suit in the name of any Pledgor, the Collateral Agent or the Secured Parties to enforce the Intellectual Property Collateral and any license thereunder. In the event of such suit, each Pledgor shall, at the reasonable request of the Collateral Agent, do any and all lawful acts and execute any and all documents requested by the Collateral Agent in aid of such enforcement and the Pledgors shall promptly reimburse and indemnify the Collateral Agent for all costs and expenses incurred by the Collateral Agent in the exercise of its rights under this Section 6.4 in accordance with Section 7.7 of the Indenture. In the event that the Collateral Agent shall elect not to bring suit to enforce the Intellectual Property Collateral, each Pledgor agrees, at the reasonable request of the Collateral Agent, to take all commercially reasonable actions necessary, whether by suit, proceeding or other action, to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value of or other damage to any of the Intellectual Property Collateral by any person.

## ARTICLE VII

### TRANSFERS

SECTION 7.1. Transfers of Pledged Collateral or Mortgaged Property. No Pledgor shall sell, convey, assign or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral or Mortgaged Property pledged by it hereunder except as expressly permitted by the Indenture.

## ARTICLE VIII

### REMEDIES

SECTION 8.1. Remedies. Subject to the terms of the Intercreditor Agreement and the Burger King Rights, upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may, but shall not be obligated to, from time to time exercise in respect of the Pledged Collateral, in addition to the other rights and remedies provided for herein or otherwise available to it, the following remedies:

(i) Personally, or by agents or attorneys, immediately take possession of the Pledged Collateral or any part thereof, from any Pledgor or any other person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon any Pledgor's premises where any of the Pledged Collateral is located, remove such Pledged Collateral, remain present at such premises to receive copies of all communications and remittances relating to the Pledged Collateral and use in connection with such removal and possession any and all services, supplies, aids and other facilities of any Pledgor;

(ii) Demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Pledged Collateral including instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Pledged Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto; provided, however, that in the event that any such payments are made directly to any Pledgor, prior to receipt by any such obligor of such instruction, such Pledgor shall segregate all amounts received pursuant thereto in trust for the benefit of the Collateral Agent and shall promptly (but in no event later than three (3) Business Days after receipt thereof) pay such amounts to the Collateral Agent;

(iii) Sell, assign, grant a license to use or otherwise liquidate, or direct any Pledgor to sell, assign, grant a license to use or otherwise liquidate, any and all investments made in whole or in part with the Pledged Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation;

(iv) Take possession of the Pledged Collateral or any part thereof, by directing any Pledgor in writing to deliver the same to the Collateral Agent at any place or places so designated by the Collateral Agent, in which event such Pledgor shall at its own expense: (A) forthwith cause the same to be moved to the place or places designated by the Collateral Agent and therewith delivered to the Collateral Agent, (B) store and keep any Pledged Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent and (C) while the Pledged Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition. Each Pledgor's obligation to deliver the Pledged Collateral as contemplated in this Section 8.1(iv) is of the essence hereof. Upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by any Pledgor of such obligation;

(v) Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of any Pledgor constituting Pledged Collateral for application to the Secured Obligations as provided in Article X hereof;

(vi) Retain and apply the Distributions to the Secured Obligations as provided in Article X hereof;

(vii) Exercise any and all rights as beneficial and legal owner of the Pledged Collateral, including perfecting assignment of and exercising any and all voting, consensual and other rights and powers with respect to any Pledged Collateral; and

(viii) Exercise all the rights and remedies of a secured party on default under the UCC, and the Collateral Agent may also in its sole discretion, without notice except as specified in Section 8.2 hereof, sell, assign or grant a license to use the Pledged Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery. The Collateral Agent or any other Secured Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of the Pledged Collateral or any part thereof at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Pledged Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such person as a credit on account of the purchase price of the Pledged Collateral or any part thereof payable by such person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of any Pledgor, and each Pledgor hereby waives, to the fullest extent permitted by law, all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Collateral Agent shall not be obligated to make any sale of the Pledged Collateral or any part thereof regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Pledgor hereby waives, to the fullest extent permitted by law, any claims against the Collateral Agent arising by reason of the

fact that the price at which the Pledged Collateral or any part thereof may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree.

SECTION 8.2. Notice of Sale. Each Pledgor acknowledges and agrees that, to the extent notice of sale or other disposition of the Pledged Collateral or any part thereof shall be required by law, ten (10) days' prior notice to such Pledgor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to any Pledgor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

SECTION 8.3. Waiver of Notice and Claims. Each Pledgor hereby waives, to the fullest extent permitted by applicable law, notice or judicial hearing in connection with the Collateral Agent's taking possession or the Collateral Agent's disposition of the Pledged Collateral or any part thereof upon the occurrence and during the continuation of an Event of Default, including any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which such Pledgor would otherwise have under law, and each Pledgor hereby further waives, to the fullest extent permitted by applicable law: (i) all damages occasioned by such taking of possession, (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law. The Collateral Agent shall not be liable for any incorrect or improper payment made pursuant to this Article VIII in the absence of a judicial determination of gross negligence or willful misconduct on the part of the Collateral Agent. Any sale of, or the grant of options to purchase, or any other realization upon, any Pledged Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Pledgor therein and thereto, and shall be a perpetual bar both at law and in equity against such Pledgor and against any and all persons claiming or attempting to claim the Pledged Collateral so sold, optioned or realized upon, or any part thereof, from, through or under such Pledgor.

SECTION 8.4. Certain Sales of Pledged Collateral.

(a) Each Pledgor recognizes that, by reason of certain prohibitions contained in law, rules, regulations or orders of any Governmental Authority, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Pledged Collateral, to limit purchasers to those who meet the requirements of such Governmental Authority. Each Pledgor acknowledges that any such sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable law, the Collateral Agent shall have no obligation to engage in public sales.

(b) Each Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act, and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Securities Collateral and Investment Property, to limit purchasers to persons who will agree, among other things, to acquire such Securities Collateral or Investment Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral or Investment Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would agree to do so.

(c) If the Collateral Agent determines to exercise its right to sell any or all of the Securities Collateral or Investment Property, upon written request, the applicable Pledgor shall determine and inform the Collateral Agent of the number of securities included in the Securities Collateral or Investment Property which may be sold by the Collateral Agent as exempt transactions under the Securities Act and the rules of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

(d) Each Pledgor further agrees that a breach of any of the covenants contained in this Section 8.4 will cause irreparable injury to the Collateral Agent and the other Secured Parties, that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 8.4 shall be specifically enforceable against such Pledgor, and such Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing.

#### SECTION 8.5. No Waiver; Cumulative Remedies.

(a) No failure on the part of the Collateral Agent to exercise, no course of dealing with respect to, and no delay on the part of the Collateral Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power, privilege or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy; nor shall the Collateral Agent be required to look first to, enforce or exhaust any other security, collateral or guaranties. All rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies provided by law or otherwise available.

(b) In the event that the Collateral Agent shall have instituted any proceeding to enforce any right, power, privilege or remedy under this Agreement or any other Security Document by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued

or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case, the Pledgors, the Collateral Agent and each other Secured Party shall be restored to their respective former positions and rights hereunder with respect to the Pledged Collateral, and all rights, remedies, privileges and powers of the Collateral Agent and the other Secured Parties shall continue as if no such proceeding had been instituted.

SECTION 8.6. Certain Additional Actions Regarding Intellectual Property. If any Event of Default shall have occurred and be continuing, upon the written demand of the Collateral Agent, each Pledgor shall execute and deliver to the Collateral Agent an assignment or assignments of the registered Patents, Trademarks and/or Copyrights and Goodwill and such other documents as are necessary to carry out the intent and purposes hereof; *provided* that such assignments shall cease to be valid and shall become void at such time as all Events of Default have been cured or waived in accordance with the Indenture. Within 30 Business Days of written notice thereafter from the Collateral Agent, each Pledgor shall make available to the Collateral Agent, to the extent within such Pledgor's power and authority, such personnel in such Pledgor's employ on the date of the Event of Default as the Collateral Agent may reasonably designate to permit such Pledgor to continue, directly or indirectly, to produce, advertise and sell the products and services sold by such Pledgor under the registered Patents, Trademarks and/or Copyrights, and such persons shall be available to perform their prior functions on the Collateral Agent's behalf.

SECTION 8.7. [Reserved]

SECTION 8.8. Actions of Collateral Agent

Subject to the Intercreditor Agreement and the Burger King Rights, after the incurrence of any Permitted Additional Pari Passu Obligations (other than the issuance of Additional Notes), the holders of a majority in principal amount of the Second Lien Obligations (other than holders of Hedging Obligations) will have the right to direct the Collateral Agent, following the occurrence and during the continuation of an Event of Default under the Indenture or the occurrence and continuation of an event of default under any agreement or instrument representing such Permitted Additional Pari Passu Obligations, to foreclose on, or exercise its other rights with respect to, the Pledged Collateral (or exercise other remedies with respect to the Pledged Collateral). Any action taken or not taken without the vote of any holder of Second Lien Obligations will nevertheless be binding on such holder.

Except as provided in the succeeding sentence, in the case of the occurrence and continuation of an Event of Default under the Indenture, or the occurrence and continuation of an event of default under any agreement or instrument representing additional Second Lien Obligations where such remedies arise, the Collateral Agent will only be permitted, subject to applicable law, to exercise remedies and sell Pledged Collateral at the direction of the applicable holders of Second Lien Obligations as set forth above. If the Collateral Agent has asked the holders of Second Lien Obligations for instruction and the applicable holders have not yet responded to such request, the Collateral Agent will be authorized to take, but will not be required to take, and will

in no event have any liability for taking, any delay in taking or the failure to take, such actions with regard to a default or event which the Collateral Agent, in good faith, believes to be reasonably required to promote and protect the interests of the holders of the Second Lien Obligations and to preserve the value of the Pledged Collateral; provided that once instructions from the applicable holders of the Second Lien Obligations have been received by the Collateral Agent, the actions of the Collateral Agent will be governed thereby and the Collateral Agent will not take any further action which would be contrary thereto.

## ARTICLE IX

### APPLICATION OF PROCEEDS

SECTION 9.1. Application of Proceeds. (a) The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Pledged Collateral or Mortgaged Property pursuant to the exercise by the Collateral Agent of its remedies shall be applied, together with any other sums then held by the Collateral Agent pursuant to this Agreement, as follows:

- (i) *first*, to amounts owing to the holders of the First Lien Obligations until the Payment in Full of First Lien Priority Debt (as such terms are defined in the Intercreditor Agreement);
- (ii) *second*, to amounts owing to the Collateral Agent in its capacity as such in accordance with the terms of the Indenture and to amounts owing to the Trustee in its capacity as such in accordance with the terms of the Indenture;
- (iii) *third*, to amounts owing to any Additional Pari Passu Agent in its capacity as such in accordance with the terms of such Additional Pari Passu Agreement;
- (iv) *fourth*, ratably to amounts owing to the holders of Secured Obligations in accordance with the terms of the Indenture and Additional Pari Passu Agreements; and
- (v) *fifth*, to the Issuer.

(b) In making the determination and allocations required by this Section 9.1, the Collateral Agent may conclusively rely upon information supplied by the applicable Additional Pari Passu Agent as to the amounts of unpaid principal and interest and other amounts outstanding with respect to such Permitted Additional Pari Passu Obligations and the Collateral Agent shall have no liability to any of the Secured Parties for actions taken in reliance on such information.

(c) If, despite the provisions of this Agreement, any Secured Party shall receive any payment or other recovery in excess of its portion of payments on account of the Secured Obligations to which it is then entitled in accordance with this Agreement, such Secured Party shall hold such payment or other recovery in trust for the benefit of all Secured Parties hereunder for distribution in accordance with this Section 9.1.

Notwithstanding the foregoing, in the event of any determination by a court of competent jurisdiction with respect to any series of Permitted Additional Pari Passu Obligations that (i) such series of Permitted Additional Pari Passu Obligations is unenforceable under applicable law or are subordinated to any other obligations (other than the Notes or another series of Permitted Additional Pari Passu Obligations), (ii) such series of Permitted Additional Pari Passu Obligations does not have an enforceable security interest in any of the Pledged Collateral and/or (iii) any intervening security interest exists securing any other obligations (other than the Notes or other series of Permitted Additional Pari Passu Obligations) on a basis ranking prior to the security interest of such series of Permitted Additional Pari Passu Obligations but junior to the security interest of the Notes or other series of Permitted Additional Pari Passu Obligations (any such condition referred to in the foregoing clauses (i), (ii) or (iii) with respect to any series of Permitted Additional Pari Passu Obligations, an “Impairment” of such series of Permitted Additional Pari Passu Obligations), the results of such Impairment shall be borne solely by the holders of such series of Permitted Additional Pari Passu Obligations, and the rights of the holders of such series of Permitted Additional Pari Passu Obligations (including, without limitation, the right to receive distributions in respect of such series Permitted Additional Pari Passu Obligations) set forth herein shall be modified to the extent necessary so that the effects of such Impairment are borne solely by the holders of such series of Permitted Additional Pari Passu Obligations subject to such Impairment. Notwithstanding the foregoing, with respect to any Pledged Collateral for which a third party (other than a holder of the Notes or series of Permitted Additional Pari Passu Obligations) has a lien or security interest that is junior in priority to the security interest of the holders of the Notes or any series of Permitted Additional Pari Passu Obligations but senior (as determined by appropriate legal proceedings in the case of any dispute) to the security interest of the holder of any other series of Permitted Additional Pari Passu Obligations (such third party, an “Intervening Creditor”), the value of any Pledged Collateral or proceeds which are allocated to such Intervening Creditor shall be deducted on a ratable basis solely from the Pledged Collateral or proceeds to be distributed in respect of the series of Permitted Additional Pari Passu Obligations with respect to which such Impairment exists.

## ARTICLE X

### MISCELLANEOUS

#### SECTION 10.1. Concerning Collateral Agent and the other Security Documents.

(a) The Collateral Agent has been appointed as collateral agent pursuant to the Indenture. The actions of the Collateral Agent hereunder are subject to the provisions of the Indenture. The Collateral Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including the release or substitution of the Pledged Collateral or Mortgaged Property), in

accordance with this Agreement, the Indenture and the other Security Documents. The Collateral Agent may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence of any such agents or attorneys-in-fact selected by it in good faith. The Collateral Agent may resign in the manner provided in the Indenture. A successor Collateral Agent may be appointed in the manner provided in the Indenture and, as applicable, in the manner provided in each Additional Pari Passu Agreement. Upon the acceptance of any appointment as the Collateral Agent by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Agreement and the other Security Documents, and the retiring Collateral Agent shall thereupon be discharged from its duties and obligations under this Agreement and the other Security Documents. After any retiring Collateral Agent's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent.

(b) The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral or Mortgaged Property in its possession if such Pledged Collateral or Mortgaged Property is accorded treatment substantially equivalent to that which the Collateral Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Collateral Agent nor any of the Secured Parties shall have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Securities Collateral, whether or not the Collateral Agent or any other Secured Party has or is deemed to have knowledge of such matters or (ii) taking any necessary steps to preserve rights against any person with respect to any Pledged Collateral or Mortgaged Property.

(c) The Collateral Agent shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Agreement and the other Security Documents and its duties hereunder and thereunder, upon advice of counsel selected by it.

(d) If any item of Pledged Collateral or Mortgaged Property also constitutes collateral granted to the Collateral Agent under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, the Collateral Agent, in its sole discretion, shall select which provision or provisions shall control.

(e) Anything herein contained to the contrary notwithstanding, (i) each Pledgor shall remain liable under this Agreement and under each of the underlying contracts to which such Pledgor a party described herein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Collateral Agent or the Holders of any of their rights, remedies or powers hereunder shall not release any Pledgor from any of its duties or obligations under this Agreement or such underlying contracts described herein and (iii) neither the Trustee or the Collateral Agent shall have

any obligation or liability under such underlying contracts by reason of or arising out of this Agreement, nor shall the Noteholders, the Trustee or the Collateral Agent be obligated to perform any of the obligations or duties of any of the Pledgors hereunder or any of the contracts described herein

(f) The Collateral Agent shall not be responsible for the existence, genuineness or value of any of the Pledged Collateral or Mortgaged Property or for the validity, perfection, priority or enforceability of the Liens in any of the Pledged Collateral or Mortgaged Property, whether impaired by operation of law or by reason of any of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence or willful misconduct on the part of the Collateral Agent. Nor shall the Collateral Agent be responsible for the validity or sufficiency of the Pledged Collateral or Mortgaged Property or any agreement or assignment contained therein, for the validity of the title of the Pledgors to the Pledged Collateral or Mortgaged Property, for insuring the Pledged Collateral or Mortgaged Property or for the payment of taxes, charges, assessments or Liens upon the Pledged Collateral or Mortgaged Property or otherwise as to the maintenance of the Pledged Collateral or Mortgaged Property.

(g) In the event that the Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any duty for the benefit of another, which in the Collateral Agent's sole discretion may cause it to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., or otherwise cause it to incur liability under CERCLA or any other federal, state or local law, the Collateral Agent reserves the right, instead of taking such action, to either resign as or arrange for the transfer of the title or control of the asset to a court-appointed receiver. The Collateral Agent shall not be liable to any person for any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of hazardous materials into the environment. If at any time it is necessary or advisable for any real property to be possessed, owned, operated or managed by any person (including the Collateral Agent), the Holders of not less than a majority in aggregate principal amount of the outstanding Notes shall direct the Collateral Agent to appoint an appropriately qualified person (excluding the Collateral Agent) who such Holders shall designate to possess, own, operate or manage, as the case may be, such real property.

(h) In acting under and by virtue of this Agreement and the other Security Documents, the Collateral Agent shall have all of the rights, protections and immunities granted to the Collateral Agent and the Trustee under the Indenture (including but not limited to the right to be indemnified under Section 7.07), and all such rights, protections and immunities are incorporated by reference herein, *mutatis mutandis*.

(i) Notwithstanding anything in this Agreement to the contrary and for the avoidance of doubt, the Collateral Agent shall have no duty to act outside of the United States in respect of any collateral located in another jurisdiction other than the United States.

SECTION 10.2. Collateral Agent May Perform; Collateral Agent Appointed Attorney-in-Fact. If any Pledgor shall fail to perform any covenants contained in this Agreement (including such Pledgor's covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay and discharge any taxes, assessments and special assessments, levies, fees and governmental charges imposed upon or assessed against, and landlords', carriers', mechanics', workmen's, repairmen's, laborers', materialmen's, suppliers' and warehousemen's Liens and other claims arising by operation of law against, all or any portion of the Pledged Collateral or Mortgaged Property, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of such Pledgor under any Pledged Collateral or Mortgaged Property or if any representation or warranty on the part of any Pledgor contained herein shall be breached, the Collateral Agent may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that the Collateral Agent shall in no event be bound to inquire into the validity of any tax, Lien, imposition or other obligation which such Pledgor fails to pay or perform as and when required hereby and which such Pledgor does not contest in accordance with the provisions of the Indenture. Any and all amounts so expended by the Collateral Agent shall be paid by the Pledgors in accordance with the provisions of Section 7.7 of the Indenture. Neither the provisions of this Section 10.2 nor any action taken by the Collateral Agent pursuant to the provisions of this Section 10.2 shall prevent any such failure to observe any covenant contained in this Agreement nor any breach of representation or warranty from constituting an Event of Default. Each Pledgor hereby appoints the Collateral Agent its attorney-in-fact, with full power and authority in the place and stead of such Pledgor and in the name of such Pledgor, or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument consistent with the terms of the Indenture, this Agreement and the other Security Documents which the Collateral Agent may deem necessary to accomplish the purposes hereof (but the Collateral Agent shall not be obligated to and shall have no liability to such Pledgor or any third party for failure to so do or take action). The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. Each Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 10.3. Continuing Security Interest; Assignment. This Agreement shall create a continuing security interest in the Pledged Collateral and shall (i) be binding upon the Pledgors, their respective successors and assigns and (ii) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and the other Secured Parties and each of their respective successors, transferees and assigns. No other persons (including any other creditor of any Pledgor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Secured Party may assign or otherwise transfer any indebtedness held by it secured by this Agreement to any other person, and such other person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party, herein or otherwise, subject however, to the provisions of the Indenture. Each of the Pledgors agrees that its obligations hereunder and the security interest created hereunder shall continue to be effective or be reinstated, as applicable, if at any time payment, or any part thereof, of all or any part of the Secured Obligations is rescinded or must otherwise be restored by the Secured Party upon the bankruptcy or reorganization of any Pledgor or otherwise.

SECTION 10.4. Termination; Release. When all the Secured Obligations have been paid in full (other than contingent liabilities not then due and payable), this Agreement shall terminate. Upon termination of this Agreement the Pledged Collateral shall be released from the Lien of this Agreement. Upon such release or any release of Pledged Collateral or any part thereof in accordance with the provisions of the Indenture, the Collateral Agent shall, upon the request and at the sole cost and expense of the Pledgors, assign, transfer and deliver to Pledgor, against receipt and without recourse to or warranty by the Collateral Agent, such of the Pledged Collateral or any part thereof to be released (in the case of a release) as may be in possession of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Pledged Collateral, proper documents and instruments acknowledging the termination hereof or the release of such Pledged Collateral, as the case may be.

The Liens securing the Secured Obligations securing the Notes will be released, in whole or in part, as provided in Section 10.3 of the Indenture.

The Liens securing Permitted Additional Pari Passu Obligations of any series will be released, in whole or in part, as provided in Additional Pari Passu Agreement governing such obligations.

SECTION 10.5. Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Pledgor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Indenture, each Additional Pari Passu Agreement and unless in writing and signed each of the parties hereto and in compliance with the terms of the Intercreditor Agreement (including, without limitation, Section 8.3 thereof). The Collateral Agent shall receive an Opinion and Officers' Certificate stating that such amendment, modification, supplement or waiver is authorized or permitted by the Indenture, this Security Agreement and any Additional Pari Passu Agreement, and that all conditions precedent to the execution of such have been satisfied. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Pledgor from the terms of any provision hereof in each case shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement or any other document evidencing the Secured Obligations including any Additional Pari Passu Agreement, no notice to or demand on any Pledgor in any case shall entitle any Pledgor to any other or further notice or demand in similar or other circumstances.

SECTION 10.6. Notices. Unless otherwise provided herein or in the Indenture, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Indenture, as to any Pledgor, addressed to it at the address of the Issuer set forth in the Indenture, as to the Collateral Agent, addressed to it at the address set forth in the Indenture, as to any Additional Pari Passu Agent, addressed to is at the address set forth in the applicable Additional Pari Passu Joinder Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 10.6. In addition to the foregoing, the Collateral Agent shall have the benefits accorded to the Trustee in Section 12.1 of the Indenture.

SECTION 10.7. Governing Law, Consent to Jurisdiction and Service of Process; Waiver of Jury Trial. Section 12.7 of the Indenture is incorporated herein, *mutatis mutandis*, as if a part hereof.

SECTION 10.8. Severability of Provisions. Any provision hereof which is invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating the remaining provisions hereof or affecting the validity, legality or enforceability of such provision in any other jurisdiction.

SECTION 10.9. Execution in Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. Delivery of any executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.10. Business Days. In the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 10.11. No Credit for Payment of Taxes or Imposition. No Pledgor shall be entitled to any credit against the principal, premium, if any, or interest payable under the Indenture, and no Pledgor shall be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Taxes on the Pledged Collateral or Mortgaged Property or any part thereof.

SECTION 10.12. No Claims Against Collateral Agent. Nothing contained in this Agreement shall constitute any consent or request by the Collateral Agent, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Pledged Collateral or Mortgaged Property or any part thereof, nor as giving any Pledgor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Collateral Agent in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

SECTION 10.13. No Release. Nothing set forth in this Agreement or any other Security Document, nor the exercise by the Collateral Agent of any of the rights or remedies hereunder, shall relieve any Pledgor from the performance of any term, covenant, condition or agreement on such Pledgor's part to be performed or observed under or in respect of any of the Pledged Collateral or Mortgaged Property or from any liability to any person under or in respect

of any of the Pledged Collateral or Mortgaged Property or shall impose any obligation on the Collateral Agent or any other Secured Party to perform or observe any such term, covenant, condition or agreement on such Pledgor's part to be so performed or observed or shall impose any liability on the Collateral Agent or any other Secured Party for any act or omission on the part of such Pledgor relating thereto or for any breach of any representation or warranty on the part of such Pledgor contained in this Agreement, the Indenture, the other Security Documents and any Additional Pari Passu Agreement, or under or in respect of the Pledged Collateral or Mortgaged Property or made in connection herewith or therewith. Anything herein to the contrary notwithstanding, neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any contracts, agreements and other documents included in the Pledged Collateral by reason of this Agreement, nor shall the Collateral Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Pledgor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Pledged Collateral hereunder. The obligations of each Pledgor contained in this Section 10.13 shall survive the termination hereof and the discharge of such Pledgor's other obligations under this Agreement, the Indenture, the other Security Documents and any Additional Pari Passu Agreement.

SECTION 10.14. Permitted Additional Pari Passu Obligations. On or after the Issue Date, the Issuer may from time to time designate additional obligations as Permitted Additional Pari Passu Obligations by delivering to the Collateral Agent, the Trustee and each Additional Pari Passu Agent (a) a certificate signed by the chief financial officer of the Issuer (i) identifying the obligations so designated and the aggregate principal amount or face amount thereof, stating that such obligations are designated as "Permitted Additional Pari Passu Obligations" for purposes hereof, (ii) representing that such designation complies with the terms of the Indenture and each then extant Additional Pari Passu Agreement, (iii) specifying the name and address of the Additional Pari Passu Agent for such obligations (if other than the Trustee) and (iv) stating that the Pledgors have complied with their obligations under Section 3.4; (b) except in the case of Additional Notes, a fully executed Additional Pari Passu Joinder Agreement (in the form attached as Exhibit 6 hereto), (c) an Officers' Certificate to the effect that the designation of such obligations as "Permitted Additional Pari Passu Obligations" does not violate the terms of the Indenture and each then extant Additional Pari Passu Agreement (upon which the Collateral Agent may conclusively and exclusively rely) and (d) evidence that the Additional Pari Passu Agent for the applicable series of Permitted Additional Pari Passu Obligations has entered into an agency agreement or other arrangement with the Collateral Agent that is acceptable to the Collateral Agent, acting in its sole discretion.

Notwithstanding the delivery of the Additional Pari Passu Joinder Agreement set forth above, the Collateral Agent shall not be obligated to act as Collateral Agent for any New Secured Parties (as such term is defined in Exhibit 6 hereto) whatsoever or to execute any document whatsoever (including any agency agreement) if in the sole judgment of the Collateral Agent doing so would impose, purport to impose or might reasonably be expected to impose upon the Collateral Agent any obligation or liability for which the Collateral Agent is not in its sole discretion fully protected. In no event shall the Collateral Agent be subject to any document that it has not executed. The Additional Pari Passu Joinder Agreement shall not be effective until it has been accepted in writing by the Collateral Agent.

SECTION 10.15. Obligations Absolute. All obligations of each Pledgor hereunder shall be absolute and unconditional irrespective of:

(i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any other Pledgor;

(ii) any lack of validity or enforceability of the Indenture, any Security Document or any Pari Passu Agreement, or any other agreement or instrument relating thereto;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Indenture, any Additional Pari Passu Agreement or any Security Document, or any other agreement or instrument relating thereto;

(iv) any pledge, exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;

(v) any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect hereof, the Indenture, any Additional Pari Passu Agreement or any Security Document, or any other agreement or instrument relating thereto except as specifically set forth in a waiver granted pursuant to the provisions of Section 10.5 hereof; or

(vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any Pledgor.

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IN WITNESS WHEREOF, each Pledgor and the Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

CARROLS RESTAURANT GROUP, INC., as Pledgor

By: /s/ Paul R. Flanders  
Name: Paul R. Flanders  
Title: VP, Treasurer and CFO

CARROLS CORPORATION, as Guarantor and Pledgor

By: /s/ Paul R. Flanders  
Name: Paul R. Flanders  
Title: VP, Treasurer and CFO

CARROLS LLC, as Guarantor and Pledgor

By: /s/ Paul R. Flanders  
Name: Paul R. Flanders  
Title: VP, Treasurer and CFO

THE BANK OF NEW YORK MELLON TRUST COMPANY,  
N.A., as Collateral Agent

By: /s/ Lawrence M. Kusch  
Name: Lawrence M. Kusch  
Title: Vice President

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FIRST LIEN SECURITY AGREEMENT

By

CARROLS RESTAURANT GROUP, INC.,  
as Borrower

and

THE GUARANTORS PARTY HERETO

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent

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Dated as of May 30, 2012

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## FIRST LIEN SECURITY AGREEMENT

This FIRST LIEN SECURITY AGREEMENT dated as of May 30, 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, this “Agreement”) made by CARROLS RESTAURANT GROUP, INC., a Delaware corporation (the “Borrower”), and the Guarantors from time to time party hereto (the “Guarantors”), as pledgors, assignors and debtors (the Borrower, together with the Guarantors, in such capacities and together with any successors in such capacities, the “Pledgors,” and each, a “Pledgor”), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as administrative agent pursuant to the Credit Agreement (as hereinafter defined) (in such capacity, the “Administrative Agent”), for the several banks and other financial institutions as may from time to time become parties to such Credit Agreement (individually a “Lender” and collectively, the “Lenders”).

### R E C I T A L S :

A. The Borrower, the Guarantors, the Lenders and the Administrative Agent, in connection with the execution and delivery of this Agreement, entered into that certain Credit Agreement, dated as of May 30, 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”) pursuant to which the Administrative Agent and the Lenders have agreed to make Loans and to issue Letters of Credit upon the terms and subject to the conditions set forth therein.

B. The Borrower and each Guarantor will receive substantial benefits from the extensions of credit under the Credit Agreement and each is, therefore, willing to enter into this Agreement.

C. Each Guarantor has, pursuant to the Credit Agreement, among other things, unconditionally guaranteed the Secured Obligations.

D. This Agreement is given by each Pledgor in favor of the Administrative Agent for the benefit of the Secured Parties (as hereinafter defined) to secure the payment and performance of all of the Secured Obligations.

E. It is a condition to the extension of the Loans and the issuance of the Letters of Credit that each Pledgor execute and deliver the applicable Security Documents, including this Agreement.

A G R E E M E N T :

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Pledgor and the Administrative Agent hereby agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. Definitions.

(a) Unless otherwise defined herein or in the Credit Agreement, capitalized terms used herein that are defined in the UCC shall have the meanings assigned to them in the UCC; provided that in any event, the following terms shall have the meanings assigned to them in the UCC:

“Accounts”; “Bank”; “Chattel Paper”; “Commercial Tort Claim”; “Commodity Account”; “Commodity Contract”; “Commodity Intermediary”; “Documents”; “Electronic Chattel Paper”; “Entitlement Order”; “Equipment”; “Financial Asset”; “Fixtures”; “Goods”; “Inventory”; “Letter-of-Credit Rights”; “Letters of Credit”; “Money”; “Payment Intangibles”; “Proceeds”; “Promissory Notes”; “Records”; “Securities Account”; “Securities Intermediary”; “Security Entitlement”; “Supporting Obligations”; and “Tangible Chattel Paper.”

(b) Terms used but not otherwise defined herein that are defined in the Credit Agreement shall have the meanings given to them in the Credit Agreement.

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

“Account Debtor” shall mean each person who is obligated on a Receivable or Supporting Obligation related thereto.

“Agreement” shall have the meaning assigned to such term in the Preamble hereof.

“Burger King Corporation” shall mean Burger King Corporation, a Florida corporation.

“Burger King Rights” shall mean the rights (if any) of Burger King Corporation under each Franchise Agreement pursuant to which Burger King Corporation shall be entitled to: (a) prior written notice of any sale of all or substantially all of the Capital Interests of the Borrower or any Guarantor; (b) a right of first refusal to purchase all or substantially all of the Capital Interests of the Borrower or any Guarantor or of all or substantially all of the assets of a restaurant subject to a Franchise Agreement in connection with a sale thereof; (c) prior approval of any sale of all or substantially all of the Capital Interests of the Borrower or any Guarantor; and (d) prior written consent to the sale, assignment, transfer, conveyance or give-away of substantially all of the assets of any restaurant subject to a Franchise Agreement; in each case to the extent set forth in a legally binding Franchise Agreement.

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“Capital Interests” in any person means any and all shares, interests (including preferred interests, restricted stock interests and stock options, warrants and other convertible instruments), participations or other equivalents in the equity interest (however designated) in such person and any rights (other than debt securities convertible into an equity interest), warrants or options to acquire an equity interest in such person.

“Collateral Support” shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Pledged Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

“Commodity Account Control Agreement” shall mean a control agreement in a form that is reasonably satisfactory to the Administrative Agent establishing the Administrative Agent’s Control with respect to any Commodity Account.

“Contracts” shall mean, collectively, with respect to each Pledgor, all sale, service, performance, equipment or property lease contracts, agreements and grants and all other contracts, agreements or grants (in each case, whether written or oral, or third party or intercompany), between such Pledgor and any third party, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof.

“Control” shall mean (i) in the case of each Deposit Account, “control,” as such term is defined in Section 9-104 of the UCC, (ii) in the case of any Security Entitlement, “control,” as such term is defined in Section 8-106 of the UCC, and (iii) in the case of any Commodity Contract, “control,” as such term is defined in Section 9-106 of the UCC.

“Control Agreements” shall mean, collectively, all Deposit Account Control Agreements, Securities Account Control Agreements and the Commodity Account Control Agreements.

“Copyrights” shall mean, collectively, with respect to each Pledgor, all copyrights (whether statutory or common law, whether established or registered in the United States or any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished) and all copyright registrations and applications made by such Pledgor, in each case, whether now owned or hereafter created or acquired by or assigned to such Pledgor, together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor’s use of such copyrights, (ii) reissues, renewals, continuations and extensions thereof and amendments thereto, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

“Copyright Security Agreement” shall mean an agreement substantially in the form of Exhibit 3 hereto.

“Default” or “Event of Default” shall mean a “default” or “event of default” under the Credit Agreement.

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“Deposit Account Control Agreement” shall mean an agreement in a form that is reasonably satisfactory to the Administrative Agent establishing the Administrative Agent’s Control with respect to any Deposit Account.

“Deposit Accounts” shall mean, collectively, with respect to each Pledgor, (i) all “deposit accounts” as such term is defined in the UCC and in any event shall include all accounts and sub-accounts relating to any of the foregoing accounts and (ii) all cash, funds, checks, notes and instruments from time to time on deposit in any of the accounts or sub-accounts described in clause (i) of this definition.

“Distributions” shall mean, collectively, with respect to each Pledgor, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity) or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Securities, from time to time received, receivable or otherwise distributed to such Pledgor in respect of or in exchange for any or all of the Pledged Securities or Intercompany Notes.

“Excluded Property” shall mean

(a) any rights or interest in any lease, contract, license or license agreement covering personal property or Real Property of any Pledgor, so long as under the terms of such lease, contract, license or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein to the Administrative Agent is prohibited (or would render such lease, contract, license or license agreement cancelled, invalid or unenforceable) and such prohibition has not been or is not waived or the consent of the other party to such lease, contract, license or license agreement has not been or is not otherwise obtained; *provided* that, this exclusion shall in no way be construed to apply if any such prohibition is unenforceable under the UCC or other applicable law or so as to limit, impair or otherwise affect the Administrative Agent’s unconditional continuing security interests in and liens upon any rights or interests of any Pledgor in or to monies due or to become due to and Pledgor under any such lease, contract, license or license agreement (including any Receivables);

(b) assets owned by any Pledgor on the date hereof or hereafter acquired and any proceeds thereof that are subject to a Lien securing any purchase money Indebtedness or Capital Lease Obligations permitted to be incurred pursuant to the provisions of the Credit Agreement to the extent and for so long as the contract or other agreement in which such Lien is granted (or the documentation providing for such purchase money Indebtedness or Capital Lease Obligation) validly prohibits the creation of any other Lien on such assets and proceeds (other than to the extent that such prohibition would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction and other than to the extent all necessary consents to creation, attachment and perfection of the Administrative Agent’s Liens thereon have been obtained);

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(c) any shares entitled to vote (within the meaning of Treasury Regulation Section 1.956-2) of any direct or indirect Subsidiary of the Borrower that is a “controlled foreign corporation” in excess of sixty-five (65%) percent of the total combined voting power of all of the issued and outstanding Capital Interests entitled to vote in such Subsidiary;

(d) any intent to use trademark application to the extent and for so long as creation of a security interest therein would result in the loss of any material rights therein, provided that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent to use trademark application shall not be considered Excluded Property;

(e) any Real Property leased by any Pledgor;

(f) the Real Properties located at 968 James Street, Syracuse, New York, a parcel of land adjacent to 12213 Olean Road, Yorkshire, New York, a parcel of land adjacent to 3002 East Avenue, Central Square, New York and 3055 Mahoning Avenue, Warren Ohio; and

(g) any Franchise Agreements that prohibit security interests thereon without consent of the franchisor;

provided, however, that Excluded Property shall not include any Proceeds, products, substitutions or replacements of any Excluded Property referred to in clause (a), (b), (c), (d) or (e) (unless such Proceeds, substitutions or replacements would constitute Excluded Property referred to in clauses (a), (b), (c), (d) or (e)).

“Franchise Agreements” shall mean all of the franchise agreements to which the Borrower or any of its Subsidiaries is a party as a franchisee, whether entered into on, prior to or following the Closing Date, as the same may be from time to time amended, modified, supplemented or restated.

“General Intangibles” shall mean, collectively, with respect to each Pledgor, all “general intangibles,” as such term is defined in the UCC, of such Pledgor and, in any event, shall include (i) all of such Pledgor’s rights, title and interest in, to and under all Contracts and insurance policies (including all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for damages or other relief pursuant to or in respect of any Contract), (ii) all know-how and warranties relating to any of the Pledged Collateral or the Mortgaged Property, (iii) any and all other rights, claims, choses-in-action and causes of action of such Pledgor against any other person and the benefits of any and all collateral or other security given by any other person in connection therewith, (iv) all guarantees, endorsements and indemnifications on, or of, any of the Pledged Collateral or any of the Mortgaged Property, (v) all lists, books, records, correspondence, ledgers, printouts, files (whether in printed form or stored electronically), tapes and other papers or materials containing information relating to any of the Pledged Collateral or any of the Mortgaged Property, including all customer or tenant lists,

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identification of suppliers, data, plans, blueprints, specifications, designs, drawings, appraisals, recorded knowledge, surveys, studies, engineering reports, test reports, manuals, standards, processing standards, performance standards, catalogs, research data, computer and automatic machinery software and programs and the like, field repair data, accounting information pertaining to such Pledgor's operations or any of the Pledged Collateral or any of the Mortgaged Property and all media in which or on which any of the information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data, (vi) all licenses, consents, permits, variances, certifications, authorizations and approvals, however characterized, now or hereafter acquired or held by such Pledgor, including building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation and (vii) all rights to reserves, deferred payments, deposits, refunds, indemnification of claims and claims for tax or other refunds against any Governmental Authority.

"Goodwill" shall mean, collectively, with respect to each Pledgor, the goodwill connected with such Pledgor's business including all goodwill connected with (i) the use of and symbolized by any Trademark or Intellectual Property License with respect to any Trademark in which such Pledgor has any interest, (ii) all know-how, trade secrets, customer and supplier lists, proprietary information, inventions, methods, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any person, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets which relate to such goodwill and (iii) all product lines of such Pledgor's business.

"Governmental Authority," means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantors" shall have the meaning assigned to such term in the Preamble hereof.

"Indenture Agreement" shall mean that certain indenture, dated as of May 30, 2012 (as amended, amended and restated, supplemented or otherwise modified from time to time) among the Borrower as issuer under the Indenture Agreement, the guarantors party thereto and The Bank of New York Mellon Trust Company, N.A., as trustee and as collateral agent.

"Instruments" shall mean, collectively, with respect to each Pledgor, all "instruments," as such term is defined in Article 9, rather than Article 3, of the UCC, and shall include all promissory notes, drafts, bills of exchange or acceptances.

"Intellectual Property Collateral" shall mean, collectively, the Patents, Trademarks, Copyrights, Intellectual Property Licenses and Goodwill.

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“Intellectual Property Licenses” shall mean, collectively, with respect to each Pledgor, all license and distribution agreements with, and covenants not to sue, any other party with respect to any Patent, Trademark or Copyright or any other patent, trademark or copyright, whether such Pledgor is a licensor or licensee, distributor or distributee under any such license or distribution agreement, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements or violations thereof, (iii) rights to sue for past, present and future infringements or violations thereof and (iv) other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights or any other patent, trademark or copyright.

“Intercompany Notes” shall mean, with respect to each Pledgor, all intercompany notes described in Schedule 10 to the Perfection Certificate and intercompany notes hereafter acquired by such Pledgor and all certificates, instruments or agreements evidencing such intercompany notes, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof to the extent permitted pursuant to the terms hereof.

“Intercreditor Agreement” shall mean that certain intercreditor agreement, dated as of May 30, 2012 between the Administrative Agent, as First Lien Agent and The Bank of New York Mellon Trust Company, N.A., as Second Lien Agent, as it may be amended, restated, supplemented or modified from time to time.

“Investment Property” shall mean a security, whether certificated or uncertificated, Security Entitlement, Securities Account, Commodity Contract or Commodity Account, excluding, however, the Securities Collateral.

“Leases” shall mean any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

“Lien” means, with respect to any property or other asset, any mortgage, deed of trust, deed to secure debt, pledge, hypothecation, assignment, deposit arrangement, security interest, lien (statutory or otherwise), charge, easement, encumbrance or other security agreement on or with respect to such property or other asset (including, without limitation, any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

“Mortgage” has the meaning specified in Section 4.10.

“Mortgage Policy” has the meaning specified in Section 4.10.

“Mortgaged Property” means, collectively, (i) each Real Property listed on Schedule 7(a) of the Perfection Certificate, (ii) each Real Property, if any, encumbered by a Mortgage delivered after the Closing Date pursuant to Section 3.4 and 4.10 and (iii) any other interest in Real Property that secures the Credit Agreement.

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“Patents” shall mean, collectively, with respect to each Pledgor, all patents issued or assigned to, and all patent applications and registrations made by, such Pledgor (whether established or registered or recorded in the United States or any other country or any political subdivision thereof), together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor’s use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof.

“Patent Security Agreement” shall mean an agreement substantially in the form of Exhibit 4 hereto.

“Perfection Certificate” means that certain perfection certificate to be executed and delivered by the Borrower in connection with the execution and delivery of the Credit Agreement and the Indenture Agreement, to be dated on or about the Closing Date and substantially identical to the form attached hereto as Exhibit 6.

“Pledge Amendment” shall have the meaning assigned to such term in Section 5.1 hereof.

“Pledged Collateral” shall have the meaning assigned to such term in Section 2.1 hereof.

“Pledged Securities” shall mean, collectively, with respect to each Pledgor, in each case other than Excluded Property, (i) all issued and outstanding Equity Interests of each issuer set forth on Schedules 9(a) and 9(b) to the Perfection Certificate as being owned by such Pledgor and all options, warrants, rights, agreements and additional Equity Interests of whatever class of any such issuer acquired by such Pledgor (including by issuance), together with all rights, privileges, authority and powers of such Pledgor relating to such Equity Interests in each such issuer or under any organization document of each such issuer, and the certificates, instruments and agreements representing such Equity Interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such Equity Interests, (ii) all Equity Interests of any issuer, which Equity Interests are hereafter acquired by such Pledgor (including by issuance) and all options, warrants, rights, agreements and additional Equity Interests of whatever class of any such issuer acquired by such Pledgor (including by issuance), together with all rights, privileges, authority and powers of such Pledgor relating to such Equity Interests or under any organization document of any such issuer, and the certificates, instruments and agreements representing such Equity Interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such Equity Interests, from time

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to time acquired by such Pledgor in any manner, and (iii) all Equity Interests issued in respect of the Equity Interests referred to in clause (i) or (ii) upon any consolidation or merger of any issuer of such Equity Interests.

“Pledgor” shall have the meaning assigned to such term in the Preamble hereof.

“Real Property.” shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Receivables” shall mean all (i) Accounts, (ii) Chattel Paper, (iii) Payment Intangibles, (iv) General Intangibles, (v) Instruments and (vi) all other rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, regardless of how classified under the UCC together with all of Pledgors’ rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Records relating thereto.

“Second Lien Agent” shall mean The Bank of New York Mellon Trust Company, N.A., in its capacity as collateral agent under the Indenture Agreement, and its permitted successors and assigns.

“Second Lien Security Agreement” shall mean that certain security agreement dated as of May 30, 2012 among the Borrower as issuer under the Indenture Agreement, the guarantors party thereto and the Second Lien Agent in its capacity as trustee (the “Trustee”).

“Secured Obligations” means any principal, premium, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker’s acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under any of the Credit Agreement, the Security Documents or any other Credit Document.

“Secured Parties” shall mean, collectively, the Administrative Agent, the Lenders, the Bank Product Providers and the Issuing Bank.

“Securities Account Control Agreement” shall mean an agreement in a form that is reasonably satisfactory to the Administrative Agent establishing the Administrative Agent’s Control with respect to any Securities Account.

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“Securities Act” shall mean the Securities Act of 1933, as amended.

“Securities Collateral” shall mean, collectively, the Pledged Securities, the Intercompany Notes and the Distributions.

“Subsidiary” means, with respect to any person, any corporation, limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Voting Interests therein is, at the time, directly or indirectly, owned by such Person and/or one or more Subsidiaries of such Person.

“Title Company” shall mean any title insurance company as shall be retained by any Pledgor and reasonably acceptable to the Administrative Agent.

“Trademarks” shall mean, collectively, with respect to each Pledgor, all trademarks (including service marks), slogans, logos, certification marks, trade dress, uniform resource locations (URL’s), domain names, corporate names and trade names, whether registered or unregistered, owned by or assigned to such Pledgor and all registrations and applications for the foregoing (whether statutory or common law and whether established or registered in the United States or any other country or any political subdivision thereof), together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor’s use of any trademarks, (ii) reissues, continuations, extensions and renewals thereof and amendments thereto, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present and future infringements thereof.

“Trademark Security Agreement” shall mean an agreement substantially in the form of Exhibit 5 hereto.

“UCC” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Administrative Agent’s and the Secured Parties’ security interest in any item or portion of the Pledged Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“Voting Interests” means, with respect to any person, securities of any class or classes of Capital Interests in such person entitling the holders thereof generally to vote on the election of members of the board of directors or comparable body of such person.

SECTION 1.2. Interpretation. The rules of interpretation specified in the Credit Agreement (including Section 1.2 thereof) shall be applicable to this Agreement.

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SECTION 1.3. Resolution of Drafting Ambiguities. Each Pledgor acknowledges and agrees that it was represented by counsel in connection with the execution and delivery hereof, that it and its counsel reviewed and participated in the preparation and negotiation hereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (i.e., the Administrative Agent) shall not be employed in the interpretation hereof.

SECTION 1.4. Perfection Certificate. The Administrative Agent, each Secured Party and each Pledgor agree that the Perfection Certificate and all descriptions of Pledged Collateral and Mortgaged Property, schedules, amendments and supplements thereto are and shall at all times remain a part of this Agreement.

## ARTICLE II

### GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2.1. Grant of Security Interest. As collateral security for the payment and performance in full of all the Secured Obligations, each Pledgor hereby pledges and grants to the Administrative Agent for the benefit of the Secured Parties, a lien on and security interest in all of the right, title and interest of such Pledgor in, to and under the following property, wherever located, and whether now existing or hereafter arising or acquired from time to time (collectively, the “Pledged Collateral”):

- (i) all Accounts;
- (ii) all Equipment, Goods, Inventory and Fixtures;
- (iii) all Documents, Instruments, Promissory Notes and Chattel Paper;
- (iv) all Letters of Credit and Letter-of-Credit Rights;
- (v) all Securities Collateral;
- (vi) all Investment Property;
- (vii) all Intellectual Property Collateral;
- (viii) the Commercial Tort Claims described on Schedule 12 to the Perfection Certificate;

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- (ix) all General Intangibles;
- (x) all Money and all Deposit Accounts, Securities Accounts and Commodities Accounts;
- (xi) all Supporting Obligations;
- (xii) all Bank Products;
- (xiii) any assets of Pledgor that now or hereafter come into the possession, custody, or control of Administrative Agent (or its agent or designee);
- (xiv) all books and records relating to the Pledged Collateral; and
- (xv) to the extent not covered by clauses (i) through (xiv) of this sentence, all other personal property of such Pledgor, whether tangible or intangible, and all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to such Pledgor from time to time with respect to any of the foregoing.

Notwithstanding anything to the contrary contained in clauses (i) through (xv) above, the security interest created by this Agreement shall not extend to, and the term "Pledged Collateral" shall not include, any Excluded Property from and after the Closing Date, no Pledgor shall permit to become effective in any document creating, governing or providing for any permit, license or agreement a provision that would prohibit the creation of a Lien on such permit, license or agreement in favor of the Administrative Agent unless such Pledgor believes, in its reasonable judgment, that such prohibition is usual and customary in transactions of such type, subject to the Burger King Rights.

SECTION 2.2. Filings. Each Pledgor hereby irrevocably authorizes the Administrative Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Pledged Collateral, including (i) whether such Pledgor is an organization, the type of organization and any organizational identification number issued to such Pledgor, (ii) any financing or continuation statements or other documents without the signature of such Pledgor where permitted by law, including the filing of a financing statement describing the Pledged Collateral as "all assets now owned or hereafter acquired by the Pledgor or in which Pledgor otherwise has rights" and (iii) in the case of a financing statement filed as a fixture filing or covering Pledged Collateral constituting minerals or the like to be extracted or timber to be cut, a sufficient description of the real property to which such Pledged Collateral relates. Each Pledgor agrees to provide all information described in the immediately preceding sentence to the Administrative Agent promptly upon request by the Administrative Agent.

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(a) Each Pledgor hereby ratifies its authorization for the Administrative Agent to file in any relevant jurisdiction any financing statements relating to the Pledged Collateral if filed prior to the date hereof.

(b) Each Pledgor hereby further authorizes the Administrative Agent to file filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country), including, the Copyright Security Agreement, the Patent Security Agreement and the Trademark Security Agreement, or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by such Pledgor hereunder, without the signature of such Pledgor, and naming such Pledgor, as debtor, and the Administrative Agent, as secured party.

(c) Notwithstanding the foregoing authorizations, in no event shall the Administrative Agent be obligated to prepare or file any financing statements whatsoever, or to maintain the perfection of the security interest granted hereunder. Each Pledgor agrees to prepare, record and file, at its own expense, financing statements (and continuation statements when applicable) with respect to the Collateral now existing or hereafter created meeting the requirements of applicable state law in such manner and in such jurisdictions as are necessary to perfect and maintain perfected the Collateral, and to deliver a file stamped copy of each such financing statement or other evidence of filing to the Administrative Agent. Neither the Trustee nor the Administrative Agent shall be under any obligation whatsoever to file any such financing or continuation statements or to make any other filing under the UCC in connection with this Agreement.

SECTION 2.3. First Priority Nature of Liens. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Administrative Agent pursuant to this Agreement shall be a first priority lien on and security interest in the Pledged Collateral. The exercise of any right or remedy by the Administrative Agent hereunder is subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.

### ARTICLE III

#### PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES; USE OF PLEDGED COLLATERAL

SECTION 3.1. Delivery of Certificated Securities Collateral. Each Pledgor represents and warrants that all certificates, agreements or instruments representing or evidencing the Securities Collateral in existence on the date hereof, have been delivered to the

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Administrative Agent for the benefit of the Administrative Agent in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank, and that the Administrative Agent has a perfected first priority security interest therein. Each Pledgor hereby agrees that all certificates, agreements or instruments representing or evidencing Securities Collateral acquired by such Pledgor after the date hereof shall promptly (but in any event within thirty (30) days after receipt thereof by such Pledgor) be delivered to and held by or on behalf of the Administrative Agent pursuant hereto. The requirements in the preceding two sentences shall not apply to the extent that the face value of the Securities Collateral (other than any Subsidiary Equity Interests) does not exceed \$1,000,000 in the aggregate for all Pledgors. All certificated Securities Collateral shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Administrative Agent. Subject to the Burger King Rights, the Administrative Agent shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to endorse, assign or otherwise transfer to or to register in the name of the Administrative Agent or any of its nominees or endorse for negotiation any or all of the Securities Collateral, without any indication that such Securities Collateral is subject to the security interest hereunder. In addition, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent shall have the right at any time to exchange certificates representing or evidencing Securities Collateral for certificates of smaller or larger denominations.

SECTION 3.2. Perfection of Uncertificated Securities Collateral. Each Pledgor represents and warrants that the Administrative Agent has a perfected first priority security interest in all uncertificated Pledged Securities pledged by it hereunder that are in existence on the date hereof. Each Pledgor hereby agrees that if any of the Pledged Securities are at any time not evidenced by certificates of ownership, then each applicable Pledgor shall, to the extent permitted by applicable law, (i) cause the issuer to execute and deliver to the Administrative Agent an acknowledgment of the pledge of such Pledged Securities substantially in the form of Exhibit 1 hereto, (ii) if necessary or desirable to perfect a security interest in such Pledged Securities, cause such pledge to be recorded on the equityholder register or the books of the Borrower, execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give the Administrative Agent the right to transfer such Pledged Securities under the terms hereof, and (iii) after the occurrence and during the continuance of any Event of Default, upon request by the Administrative Agent, (A) cause the organization documents of each such Borrower that is a Subsidiary of the Borrower to be amended to provide that such Pledged Securities shall be treated as “securities” for purposes of the UCC and (B) cause such Pledged Securities of such issuers to become certificated and delivered to the Administrative Agent in accordance with the provisions of Section 3.1.

SECTION 3.3. Financing Statements and Other Filings; Maintenance of Perfected Security Interest. Each Pledgor represents and warrants that all financing statements, agreements, instruments and other documents necessary to perfect the security interest granted by it to the Administrative Agent in respect of the Pledged Collateral have

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been delivered to the Administrative Agent in completed and, to the extent necessary, duly executed form for filing in each governmental, municipal or other office specified in Schedule 6 to the Perfection Certificate. Each Pledgor agrees that at the sole cost and expense of the Pledgors, such Pledgor will maintain the security interest created by this Agreement in the Pledged Collateral as a perfected first priority security interest subject only to Permitted Liens and file all UCC-3 continuation statements necessary to continue the perfection of the security interest created by this Agreement.

SECTION 3.4. Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Administrative Agent to enforce, the Administrative Agent's security interest in the Pledged Collateral, each Pledgor represents and warrants (as to itself) as follows and agrees, in each case at such Pledgor's own expense, to take the following actions with respect to the following Pledged Collateral:

(a) Instruments and Tangible Chattel Paper. As of the date hereof, no amounts payable under or in connection with any of the Pledged Collateral are evidenced by any Instrument or Tangible Chattel Paper other than such Instruments and Tangible Chattel Paper listed in Schedule 10 to the Perfection Certificate. Subject to Section 3.1, each Instrument and each item of Tangible Chattel Paper listed in Schedule 10 to the Perfection Certificate not constituting Excluded Property has been properly endorsed, assigned and delivered to the Administrative Agent, accompanied by instruments of transfer or assignment duly executed in blank. At any time such requirements apply, the applicable Pledgor shall give notice thereof to the Administrative Agent in accordance with Section 9.2 of the Credit Agreement and the Administrative Agent shall not be charged with any knowledge that such requirements are applicable unless such notice has been given. If any amount then payable under or in connection with any of the Pledged Collateral shall be evidenced by any Instrument or Tangible Chattel Paper, and such amount, together with all amounts payable evidenced by any Instrument or Tangible Chattel Paper not previously delivered to the Administrative Agent exceeds \$1,000,000 in the aggregate for all Pledgors, the Pledgor acquiring such Instrument or Tangible Chattel Paper shall promptly (but in any event within thirty (30) days after receipt thereof), subject to Section 3.1, endorse, assign and deliver the same to the Administrative Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Administrative Agent may from time to time specify.

(b) Deposit Accounts. As of the date hereof, no Pledgor has any Deposit Accounts other than the accounts listed in Schedule 13 to the Perfection Certificate. Within forty-five (45) days after the Closing Date (or such longer period of time as agreed to by the Administrative Agent in its sole discretion), the Administrative Agent will have a first priority security interest in each such Deposit Account, which security interest will be, upon the execution and delivery of a Deposit Account Control Agreement

with respect thereto perfected by Control. No Pledgor shall hereafter establish and maintain any Deposit Account with any Bank unless such Bank and such Pledgor shall have duly executed and delivered to the Administrative Agent a Deposit Account Control Agreement with respect to such Deposit Account. At any time such requirements apply, the applicable Pledgor shall give notice thereof to the Administrative Agent in accordance with Section 9.2 of the Credit Agreement and the Administrative Agent shall not be charged with any knowledge that such requirements are applicable unless such notice has been given. The Administrative Agent agrees with each Pledgor that the Administrative Agent shall not give any instructions directing the disposition of funds from time to time credited to any Deposit Account or withhold any withdrawal rights from such Pledgor with respect to funds from time to time credited to any Deposit Account unless an Event of Default has occurred and is continuing. Each Pledgor agrees that once the Administrative Agent sends an instruction or notice to a Bank exercising its Control over any Deposit Account such Pledgor shall not give any instructions or orders with respect to such Deposit Account including, without limitation, instructions for distribution or transfer of any funds in such Deposit Account. No Pledgor shall grant Control of any Deposit Account to any person other than the Administrative Agent.

(c) Securities Accounts and Commodity Accounts. (a) As of the date hereof, no Pledgor has any Securities Accounts or Commodity Accounts other than those listed in Schedule 13 to the Perfection Certificate. Within forty-five (45) days after the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), the Administrative Agent will have a first priority security interest in each such Securities Account and Commodity Account, which security interest will be, in the case of Securities Accounts, upon the execution and delivery of a Securities Account Control Agreement with respect thereto, perfected by Control. No Pledgor shall hereafter establish and maintain any Securities Account or Commodity Account with any Securities Intermediary or Commodity Intermediary unless such Securities Intermediary or Commodity Intermediary, as the case may be, and such Pledgor shall have duly executed and delivered a Control Agreement with respect to such Securities Account or Commodity Account, as the case may be. At any time such requirements apply, the applicable Pledgor shall give notice thereof to the Administrative Agent in accordance with Section 9.2 of the Credit Agreement and the Administrative Agent shall not be charged with any knowledge that such requirements are applicable unless such notice has been given. Each Pledgor shall accept any cash and Investment Property in trust for the benefit of the Administrative Agent and within five (5) Business Days of actual receipt thereof, deposit any and all cash and Investment Property received by it into a Deposit Account or Securities Account subject to Administrative Agent's Control. The Administrative Agent agrees with each Pledgor that the Administrative Agent shall not give any Entitlement Orders or instructions or directions to any Borrower of uncertificated securities, Securities Intermediary or Commodity Intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by such Pledgor, unless an Event of Default has occurred and is continuing or, after giving effect to any such investment and withdrawal rights, would occur. Each Pledgor agrees that once the Administrative Agent sends an instruction or notice to a Securities Intermediary or Commodity Intermediary exercising its Control over any Securities Account and Commodity Account such Pledgor shall not give any instructions or orders with respect to such Securities Account and Commodity Account including, without limitation, instructions for investment, distribution

or transfer of any Investment Property or financial asset maintained in such Securities Account or Commodity Account. No Pledgor shall grant Control over any Investment Property to any person other than the Administrative Agent or, subject to the terms of the Intercreditor Agreement, the Second Lien Agent. As between the Administrative Agent and the Pledgors, the Pledgors shall bear the investment risk with respect to the Investment Property and Pledged Securities, and the risk of loss of, damage to, or the destruction of the Investment Property and Pledged Securities, whether in the possession of, or maintained as a Security Entitlement or deposit by, or subject to the Control of, the Administrative Agent, a Securities Intermediary, a Commodity Intermediary, any Pledgor or any other person.

(d) Electronic Chattel Paper and Transferable Records. As of the date hereof, no amount under or in connection with any of the Pledged Collateral is evidenced by any Electronic Chattel Paper or any “transferable record” (as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction) other than such Electronic Chattel Paper and transferable records listed in Schedule 10 to the Perfection Certificate. If any amount payable under or in connection with any of the Pledged Collateral shall be evidenced by any Electronic Chattel Paper or any transferable record, the Pledgor acquiring such Electronic Chattel Paper or transferable record shall promptly notify the Administrative Agent thereof and shall take such action as is reasonably necessary to vest in the Administrative Agent control of such Electronic Chattel Paper under Section 9-105 of the UCC or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The requirement in the preceding sentence shall not apply to the extent that such amount, together with all amounts payable evidenced by Electronic Chattel Paper or any transferable record in which the Administrative Agent has not been vested control within the meaning of the statutes described in the immediately preceding sentence, does not exceed \$3,000,000 in the aggregate for all Pledgors. At any time such requirement applies, the applicable Pledgor shall give notice thereof to the Administrative Agent in accordance with Section 9.2 of the Credit Agreement and the Administrative Agent shall not be charged with any knowledge that such requirements are applicable unless such notice has been given. The Pledgors may make alterations to the Electronic Chattel Paper or transferable record, provided that such alterations are permitted under Section 9-105 of the UCC or Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act, as determined by the Borrower, and unless an Event of Default has occurred and is continuing.

(e) Letter-of-Credit Rights. If any Pledgor is at any time a beneficiary under a Letter of Credit now or hereafter issued, such Pledgor shall promptly (but in any event within thirty (30) days after receipt thereof by such Pledgor) notify the Administrative Agent thereof and such Pledgor shall, either (i) use commercially reasonable efforts to arrange for the Borrower and any confirmer of such Letter of Credit to consent to an assignment

to the Administrative Agent of the proceeds of any drawing under the Letter of Credit or (ii) arrange for the Administrative Agent to become the transferee beneficiary of such Letter of Credit, with the Administrative Agent agreeing, in each case, that the proceeds of any drawing under the Letter of Credit are to be applied as provided in the Credit Agreement. The actions in the preceding sentence shall not be required to the extent that the amount of any such Letter of Credit, together with the aggregate amount of (a) all other Letters of Credit for which the actions described above in clause (i) and (ii) have not been taken and (b) all Commercial Tort Claims in which the Administrative Agent does not have a perfected security interest and (c) all motor vehicles (and any such other Equipment covered by certificates of title or ownership) as to which any Pledgor has not delivered a certificate of title or ownership to the Administrative Agent, does not exceed \$5,000,000 in the aggregate for all Pledgors. At any time such action is required, the applicable Pledgor shall give notice thereof to the Administrative Agent in accordance with Section 9.2 of the Credit Agreement and the Administrative Agent shall not be charged with any knowledge that such requirement is applicable unless such notice has been given.

(f) Commercial Tort Claims. As of the date hereof, each Pledgor hereby represents and warrants that it holds no Commercial Tort Claims other than those listed in Schedule 12 to the Perfection Certificate. If any Pledgor shall at any time hold or acquire a Commercial Tort Claim, such Pledgor shall promptly, and in any event within thirty (30) days, notify the Administrative Agent in writing signed by such Pledgor of the brief details thereof and grant to the Administrative Agent in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement, with such writing to be in such form and substance as is reasonably necessary to grant a security interest in such Commercial Tort Claim. The requirement in the preceding sentence shall not apply to the extent that the amount of such Commercial Tort Claim, together with the amount of (a) all other Commercial Tort Claims held by any Pledgor in which the Administrative Agent does not have a perfected security interest, (b) all Letters of Credit (except to the extent constituting Supporting Obligations) in which the Administrative Agent does not have a perfected security interest and (c) all motor vehicles (and any such other Equipment covered by certificates of title or ownership) as to which any Pledgor has not delivered a certificate of title or ownership to the Administrative Agent, does not exceed \$5,000,000 in the aggregate for all Pledgors. At any time such requirement applies, the applicable Pledgor shall give notice thereof to the Administrative Agent in accordance with Section 9.2 of the Credit Agreement and the Administrative Agent shall not be charged with any knowledge that such requirement is applicable unless such notice has been given.

(g) Each Pledgor shall deliver to the Administrative Agent originals of the certificates of title or ownership for the motor vehicles (and any other Equipment covered by certificates of title or ownership) owned by it, with the Administrative Agent listed as lienholder therein. Such requirement shall not apply to the extent the aggregate amount of (a) all motor vehicles (and any such other Equipment covered by certificates of title or ownership) as to which any Pledgor has not delivered a certificate of title or ownership to

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the Administrative Agent, (b) all Commercial Tort Claims in which the Administrative Agent does not have a perfected security interest and (c) all Letters of Credit (except to the extent constituting Supporting Obligations) in which the Administrative Agent does not have a perfected security, does not exceed \$5,000,000 in the aggregate for all Pledgors.

(h) After-Acquired Collateral. Unless otherwise provided, upon the acquisition by the Borrower or any Guarantor after the date hereof (1) any after-acquired assets, including, but not limited to, any after-acquired Real Property or any Equipment or Fixtures which constitute accretions, additions or technological upgrades to the Equipment or Fixtures or any working capital assets that, in any such case, form part of the Collateral, or (2) any replacement assets, the Borrower or such Pledgor shall execute and deliver, (i) with regard to any Real Property that is acquired for the purpose of serving as a restaurant, mortgages and related documentation and opinions as specified in Section 4.10 hereof within 365 days of the date of acquisition, (ii) with regard to any other Real Property, mortgages and related documentation and opinions as specified in Section 4.10 within 180 days of the date of acquisition (or such later date as any applicable regulatory approvals have been obtained) and (iii) to the extent required by the Security Documents, any information, documentation, financing statements or other certificates as may be necessary to vest in the Administrative Agent a perfected security interest, subject only to Permitted Liens, in such after-acquired Property (other than Excluded Property and Collateral that the Borrower or such Guarantor is not required to take actions to perfect) and to have such after-acquired Property added to the Collateral, and thereupon all provisions of the Credit Agreement, the Security Documents and the Intercreditor Agreement relating to the Collateral shall be deemed to relate to such after-acquired Property to the same extent and with the same force and effect.

SECTION 3.5. Joinder of Additional Guarantors. The Pledgors shall cause each Subsidiary of the Borrower which, from time to time, after the date hereof shall be required to pledge any assets to the Administrative Agent for the benefit of the Secured Parties pursuant to the provisions of Sections 5.10 and 5.12 of the Credit Agreement, to execute and deliver to the Administrative Agent a joinder agreement in the form of Exhibit 1.1(c) to the Credit Agreement.

SECTION 3.6. Supplements; Further Assurances. Each Pledgor shall take such further actions, and execute and/or deliver to the Administrative Agent such additional financing statements, amendments, assignments, agreements, supplements, powers and instruments, as is reasonably necessary in order to create, perfect, preserve and protect the security interest in and lien on the Pledged Collateral and the Mortgaged Property as provided herein and the rights and interests granted to the Administrative Agent hereunder, to carry into effect the purposes hereof or better to assure and confirm the validity, enforceability and priority of the Administrative Agent's security interest in and lien on the Pledged Collateral and Mortgaged Property or permit the Administrative Agent to exercise and enforce its rights, powers and remedies hereunder and the other Security Documents with respect to any Pledged Collateral and Mortgaged Property, including the

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filing of financing statements, continuation statements and other documents (including this Agreement) under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interest created hereby and the execution and delivery of Control Agreements, in form reasonably satisfactory to the Administrative Agent and in such offices (including the United States Patent and Trademark Office and the United States Copyright Office) wherever required by law to perfect, continue and maintain the validity, enforceability and priority of the security interest in and lien on the Pledged Collateral and Mortgaged Property as provided herein and the other Security Documents and to preserve the other rights and interests granted to the Administrative Agent hereunder and the other Security Documents, as against third parties, with respect to the Pledged Collateral and Mortgaged Property. Without limiting the generality of the foregoing, each Pledgor shall make, execute, endorse, acknowledge, file or refile and/or deliver to the Administrative Agent from time to time upon reasonable request by the Administrative Agent such lists, schedules, descriptions and designations of the Pledged Collateral and Mortgaged Property, copies of warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments as the Administrative Agent shall reasonably request. If an Event of Default has occurred and is continuing, the Administrative Agent may institute and maintain, in its own name or in the name of any Pledgor, such suits and proceedings as the Administrative Agent may be advised by counsel shall be necessary or expedient to prevent any impairment of the security interest in or lien on or the perfection thereof in the Pledged Collateral and Mortgaged Property. All of the foregoing shall be at the sole cost and expense of the Pledgors.

### SECTION 3.7.

## ARTICLE IV

### REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Pledgor represents, warrants and covenants as follows:

SECTION 4.1. Title. Except for the security interest granted to the Administrative Agent for the benefit of the Secured Parties pursuant to this Agreement and Permitted Liens, such Pledgor owns and has rights and, as to Pledged Collateral acquired by it from time to time after the date hereof, will own and have rights in each item of Pledged Collateral pledged by it hereunder, free and clear of any and all Liens other than the Permitted Liens. In addition, no Liens or claims exist on the Securities Collateral, other than as permitted by Section 6.2 of the Credit Agreement and with respect to the Burger King Rights.

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SECTION 4.2. Validity of Security Interest. The security interest in and Lien on the Pledged Collateral granted to the Administrative Agent for the benefit of the Secured Parties hereunder constitutes (a) a legal and valid security interest in all the Pledged Collateral securing the payment and performance of the Secured Obligations, and (b) subject to the filings and other actions described in Schedule 6 to the Perfection Certificate (to the extent required to be listed on the schedules to the Perfection Certificate as of the date this representation is made or deemed made), a perfected security interest in all the Pledged Collateral. The security interest and Lien granted to the Administrative Agent for the benefit of the Secured Parties pursuant to this Agreement in and on the Pledged Collateral will at all times constitute a perfected, continuing security interest therein, prior to all other Liens on the Pledged Collateral except for Permitted Liens.

SECTION 4.3. Defense of Claims; Transferability of Pledged Collateral. Each Pledgor shall, at its own cost and expense, defend title to the Pledged Collateral pledged by it hereunder and the security interest therein and Lien thereon granted to the Administrative Agent and the priority thereof against all claims and demands of all persons, at its own cost and expense, at any time claiming any interest therein adverse to the Administrative Agent or any other Secured Party other than Permitted Liens. There is no agreement (other than with respect to a Permitted Lien), order, judgment or decree, and no Pledgor shall enter into any agreement (other than with respect to a Permitted Lien) or take any other action, that would restrict the transferability of any of the Pledged Collateral or otherwise impair or conflict with such Pledgor's obligations or the rights of the Administrative Agent hereunder.

SECTION 4.4. Other Financing Statements. It has not filed, nor authorized any third party to file (nor will there be), any valid or effective financing statement (or similar statement, instrument of registration or public notice under the law of any jurisdiction) covering or purporting to cover any interest of any kind in the Pledged Collateral, except such as have been filed in favor of the Administrative Agent or in favor of the Second Lien Agent pursuant to this Agreement or in favor of any holder of a Permitted Lien with respect to such Lien or financing statements or public notices relating to the termination statements listed on Schedule 8 to the Perfection Certificate. No Pledgor shall execute, authorize or permit to be filed in any public office any financing statement (or similar statement, instrument of registration or public notice under the law of any jurisdiction) relating to any Pledged Collateral, except financing statements and other statements and instruments filed or to be filed in respect of and covering the security interests granted by such Pledgor to the holders of the Permitted Liens.

SECTION 4.5. Location of Inventory and Equipment. It shall not move any Equipment or Inventory with a fair market value in excess of \$3,000,000 in the aggregate to any location, other than any location that is listed in the relevant Schedules to the Perfection

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Certificate, unless it shall have given the Administrative Agent not less than 30 days' prior written notice of its intention so to do, clearly describing such new location and confirming the attachment of the Lien and security interest created by this Agreement to the Collateral located in the new location, and confirming further that each Pledgor has executed and filed any instruments or statements necessary to create, preserve or perfect the Administrative Agent's security interest in such relocated Collateral; provided that in no event shall any Equipment or Inventory be moved to any location outside of the continental United States.

SECTION 4.6. Due Authorization and Issuance. All of the Pledged Securities existing on the date hereof have been, and to the extent any Pledged Securities are hereafter issued, such Pledged Securities will be, upon such issuance, duly authorized, validly issued and fully paid and non-assessable to the extent applicable. To the knowledge of the Pledgors, there is no amount or other obligation owing by any Pledgor to any Borrower of the Pledged Securities in exchange for or in connection with the issuance of the Pledged Securities or any Pledgor's status as a partner or a member of any Borrower of the Pledged Securities.

SECTION 4.7. Consents, etc. In the event that the Administrative Agent desires to exercise any remedies, voting or consensual rights or attorney-in-fact powers set forth in this Agreement or the other Security Documents and determines it necessary to obtain any approvals or consents of any Governmental Authority or any other person therefor, then, upon the reasonable request of the Administrative Agent, such Pledgor agrees to use its commercially reasonable efforts to assist and aid the Administrative Agent to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers.

SECTION 4.8. Pledged Collateral and Mortgaged Property. All information set forth herein, including the schedules hereto, and all information contained in any documents, schedules and lists heretofore delivered to any Secured Party, including the Perfection Certificate and the schedules thereto, in connection with this Agreement, in each case, relating to the Pledged Collateral and Mortgaged Property, is accurate and complete in all material respects. The Pledged Collateral and Mortgaged Property described on the schedules to the Perfection Certificate constitutes all of the property of such type of Pledged Collateral and Mortgaged Property owned or held by the Pledgors (other than the Excluded Property).

SECTION 4.9. Insurance. In the event that the proceeds of any insurance claim are paid to any Pledgor after the Administrative Agent has exercised its right to foreclose after the occurrence and continuation of an Event of Default, such Net Cash Proceeds shall, subject to the Intercreditor Agreement, be held in trust for the benefit of the Administrative Agent and promptly after receipt thereof shall be paid to the Administrative Agent for application in accordance with Section 2.7(b)(iv) of the Credit Agreement.

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SECTION 4.10. Post-Closing Collateral Matters. The Administrative Agent shall have received from the Borrower and each applicable Pledgor all post-closing deliverables required to be delivered pursuant to Section 5.13(e) of the Credit Agreement.

SECTION 4.11. No Impairment of the Security Interests. No Pledgor shall take any action, or knowingly or negligently omit to take any action, which action or omission might or would have the result of materially impairing the security interest with respect to the Pledged Collateral or Mortgaged Property (for the avoidance of doubt, (i) Permitted Liens and (ii) the entry by the Borrower or its Subsidiaries into Franchise Agreements that provide for the Burger King Rights shall not, in each case, be deemed to materially impair the security interest).

## ARTICLE V

### CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL

SECTION 5.1. Pledge of Additional Securities Collateral. Upon obtaining any Pledged Securities or Intercompany Notes of any Person, each Pledgor shall maintain such Pledged Securities or Intercompany Notes in trust for the benefit of the Administrative Agent. For any such Pledged Securities or Intercompany Notes having a face value in excess of \$3,000,000 (other than any Equity Interests of a Subsidiary), each Pledgor shall promptly (but in any event within thirty (30) days after receipt thereof) deliver to the Administrative Agent a pledge amendment in substantially the form of Exhibit 1 hereto (each, a “Pledge Amendment”), and the certificates and other documents required under Section 3.1 and Section 3.2. Each Pledgor shall confirm the attachment of the Lien hereby created on and in respect of such additional Pledged Securities or Intercompany Notes. Each Pledgor hereby authorizes the Administrative Agent to attach each Pledge Amendment to this Agreement and agrees that all Pledged Securities or Intercompany Notes listed on any such Pledge Amendment shall for all purposes hereunder be considered Pledged Collateral.

SECTION 5.2. Voting Rights; Distributions; etc.

(a) So long as no Event of Default shall have occurred and be continuing:

(i) Each Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes hereof, the Credit Agreement or any other document evidencing the Secured Obligations.

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(ii) Each Pledgor shall be entitled to receive and retain, and to utilize free and clear of the Lien hereof, any and all Distributions, but only if and to the extent made in accordance with the provisions of the Credit Agreement; provided, however, that any and all such Distributions consisting of rights or interests in the form of securities shall, subject to the Intercreditor Agreement and Section 5.1 hereof, be forthwith delivered to the Administrative Agent to hold as Pledged Collateral and shall, if received by any Pledgor, be received in trust for the benefit of the Administrative Agent, be segregated from the other property or funds of such Pledgor and be promptly (but in any event within five days after receipt thereof) delivered to the Administrative Agent as Pledged Collateral in the same form as so received (with any necessary endorsement).

(b) So long as no Event of Default shall have occurred and be continuing, the Administrative Agent shall be deemed without further action or formality to have granted to each Pledgor all necessary consents relating to voting rights and shall, if necessary, upon written request of any Pledgor and at the sole cost and expense of the Pledgors, from time to time execute and deliver (or cause to be executed and delivered) to such Pledgor all such instruments as such Pledgor may reasonably request in order to permit such Pledgor to exercise the voting and other rights which it is entitled to exercise pursuant to Section 5.2(a)(i) hereof and to receive the Distributions which it is authorized to receive and retain pursuant to Section 5.2(a)(ii) hereof.

(c) Upon the occurrence and during the continuance of any Event of Default and upon notice from the Administrative Agent and subject to the Burger King Rights:

(i) All rights of each Pledgor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 5.2(a)(i) hereof shall immediately cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights.

(ii) All rights of each Pledgor to receive Distributions which it would otherwise be authorized to receive and retain pursuant to Section 5.2(a)(ii) hereof shall immediately cease and all such rights shall thereupon become vested in the Administrative Agent, which shall thereupon have the sole right to receive and hold as Pledged Collateral such Distributions.

(d) Each Pledgor shall, at its sole cost and expense, from time to time execute and deliver to the Administrative Agent appropriate instruments as the Administrative Agent may request in order to permit the Administrative Agent to exercise the voting and other rights which it may be entitled to exercise pursuant to Section 5.2(c)(i) hereof and to receive all Distributions which it may be entitled to receive under Section 5.2(c)(ii) hereof.

(e) All Distributions which are received by any Pledgor contrary to the provisions of Section 5.2(a)(ii) hereof shall be received in trust for the benefit of the Administrative Agent, shall be segregated from other funds of such Pledgor and shall immediately be paid over to the Administrative Agent as Pledged Collateral in the same form as so received (with any necessary endorsement).

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SECTION 5.3. Defaults, etc. Each Pledgor hereby represents and warrants that (i) such Pledgor is not in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Pledgor is a party relating to the Pledged Securities pledged by it, (ii) no Securities Collateral pledged by such Pledgor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Pledgor by any person with respect thereto, and (iii) as of the date hereof, there are no certificates, instruments, documents or other writings (other than the organization documents that have been delivered to the Administrative Agent and certificates representing such Pledged Securities that have been delivered to the Administrative Agent) which evidence any Pledged Securities of such Pledgor.

### SECTION 5.4. Certain Agreements of Pledgors As Issuers and Holders of Equity Interests.

(a) In the case of each Pledgor which is an issuer of Securities Collateral, such Pledgor agrees to be bound by the terms of this Agreement relating to the Securities Collateral issued by it and will comply in all material respects with such terms insofar as such terms are applicable to it.

(b) In the case of each Pledgor which is a partner, shareholder or member, as the case may be, in a partnership, limited liability company or other entity, such Pledgor hereby consents to the extent required by the applicable organization document to the pledge by each other Pledgor, pursuant to the terms hereof, of the Pledged Securities in such partnership, limited liability company or other entity and, upon the occurrence and during the continuance of an Event of Default and subject to the Burger King Rights, to the transfer of such Pledged Securities to the Administrative Agent or its nominee and to the substitution of the Administrative Agent or its nominee as a substituted partner, shareholder or member in such partnership, limited liability company or other entity with all the rights, powers and duties of a general partner, limited partner, shareholder or member, as the case may be.

ARTICLE VI

CERTAIN PROVISIONS CONCERNING INTELLECTUAL  
PROPERTY COLLATERAL

SECTION 6.1. Grant of Intellectual Property License. For the purpose of enabling the Administrative Agent, during the continuance of an Event of Default, to exercise rights and remedies under Article IX hereof at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Pledgor hereby grants to the Administrative Agent, to the extent assignable, an irrevocable, non-exclusive license to use, assign, license or sublicense any of the Intellectual Property Collateral now owned or hereafter acquired by such Pledgor, wherever the same may be located. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof.

SECTION 6.2. Protection of Administrative Agent's Security. On a continuing basis, each Pledgor shall, at its sole cost and expense, (i) promptly following its becoming aware thereof, notify the Administrative Agent of any adverse determination in any proceeding or the institution of any proceeding in any federal, state or local court or administrative body or in the United States Patent and Trademark Office or the United States Copyright Office regarding any Intellectual Property Collateral, such Pledgor's right to register such Intellectual Property Collateral or its right to keep and maintain such registration in full force and effect to the extent that such Intellectual Property Collateral exceeds \$1,000,000 (ii) maintain all Intellectual Property Collateral as presently used and operated, (iii) not permit to lapse or become abandoned any Intellectual Property Collateral, and not settle or compromise any pending or future litigation or administrative proceeding with respect to any such Intellectual Property Collateral, in either case except as shall be consistent with commercially reasonable business judgment, (iv) upon such Pledgor obtaining knowledge thereof, promptly notify the Administrative Agent in writing of any event which may be reasonably expected to materially and adversely affect the value or utility of any Intellectual Property Collateral or the rights and remedies of the Administrative Agent in relation thereto including a levy or threat of levy or any legal process against any Intellectual Property Collateral, (v) not license any Intellectual Property Collateral other than licenses entered into by such Pledgor in, or incidental to, the ordinary course of business, or amend or permit the amendment of any of the licenses in a manner that materially and adversely affects the right to receive payments thereunder, or in any manner that would materially impair the value of any Intellectual Property Collateral or the Lien on and security interest in the Intellectual Property Collateral created therein hereby and (vi) diligently keep adequate records respecting all Intellectual Property Collateral.

SECTION 6.3. After-Acquired Property. If any Pledgor shall at any time after the date hereof (i) obtain any rights to any additional Intellectual Property Collateral or (ii) become entitled to the benefit of any additional Intellectual Property Collateral or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Intellectual Property Collateral, or any improvement on any Intellectual Property Collateral, or if any intent-to use trademark application is no longer subject to clause (d) of the definition of Excluded Property, the provisions hereof shall automatically apply thereto and any such item enumerated in the preceding clause (i) or (ii) shall automatically constitute Intellectual Property Collateral as if such would have constituted Intellectual Property Collateral at the time of execution hereof and be subject to the Lien and security interest created by this Agreement without further action by any party. Each Pledgor

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shall promptly (and in any event within 30 days) provide to the Administrative Agent written notice of any of the foregoing and confirm the attachment of the Lien and security interest created by this Agreement to any rights described in clauses (i) and (ii) above by execution of an instrument in form reasonably necessary to grant such a security interest to the Administrative Agent and the filing of any instruments or statements as shall be reasonably necessary to create, preserve, protect or perfect the Administrative Agent's security interest in such Intellectual Property Collateral. Further, each Pledgor agrees to modify this Agreement by amending Schedules 11(a) and 11(b) to the Perfection Certificate to include any Intellectual Property Collateral of such Pledgor acquired or arising after the date hereof.

SECTION 6.4. Litigation. Unless there shall occur and be continuing any Event of Default, each Pledgor shall have the right to commence and prosecute in its own name, as the party in interest, for its own benefit and at the sole cost and expense of the Pledgors, such applications for protection of the Intellectual Property Collateral and suits, proceedings or other actions to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value or other damage as are necessary to protect the Intellectual Property Collateral. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall have the right but shall in no way be obligated to file applications for protection of the Intellectual Property Collateral and/or bring suit in the name of any Pledgor, the Administrative Agent or the Secured Parties to enforce the Intellectual Property Collateral and any license thereunder. In the event of such suit, each Pledgor shall, at the reasonable request of the Administrative Agent, do any and all lawful acts and execute any and all documents requested by the Administrative Agent in aid of such enforcement and the Pledgors shall promptly reimburse and indemnify the Administrative Agent for all costs and expenses incurred by the Administrative Agent in the exercise of its rights under this Section 6.4 in accordance with Section 9.5 of the Credit Agreement. In the event that the Administrative Agent shall elect not to bring suit to enforce the Intellectual Property Collateral, each Pledgor agrees, at the reasonable request of the Administrative Agent, to take all commercially reasonable actions necessary, whether by suit, proceeding or other action, to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value of or other damage to any of the Intellectual Property Collateral by any person.

ARTICLE VII

[RESERVED]

ARTICLE VIII

TRANSFERS

SECTION 8.1. Transfers of Pledged Collateral or Mortgaged Property. No Pledgor shall sell, convey, assign or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral or Mortgaged Property pledged by it hereunder except as expressly permitted by the Credit Agreement.

ARTICLE IX

REMEDIES

SECTION 9.1. Remedies. Subject to the terms of the Intercreditor Agreement and the Burger King Rights, upon the occurrence and during the continuance of any Event of Default, the Administrative Agent may, but shall not be obligated to, from time to time exercise in respect of the Pledged Collateral, in addition to the other rights and remedies provided for herein or otherwise available to it, the following remedies:

(i) Personally, or by agents or attorneys, immediately take possession of the Pledged Collateral or any part thereof, from any Pledgor or any other person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon any Pledgor's premises where any of the Pledged Collateral is located, remove such Pledged Collateral, remain present at such premises to receive copies of all communications and remittances relating to the Pledged Collateral and use in connection with such removal and possession any and all services, supplies, aids and other facilities of any Pledgor;

(ii) Demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Pledged Collateral including instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Pledged Collateral

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to make any payment required by the terms of such agreement, instrument or other obligation directly to the Administrative Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto; provided, however, that in the event that any such payments are made directly to any Pledgor, prior to receipt by any such obligor of such instruction, such Pledgor shall segregate all amounts received pursuant thereto in trust for the benefit of the Administrative Agent and shall promptly (but in no event later than three (3) Business Days after receipt thereof) pay such amounts to the Administrative Agent;

(iii) Sell, assign, grant a license to use or otherwise liquidate, or direct any Pledgor to sell, assign, grant a license to use or otherwise liquidate, any and all investments made in whole or in part with the Pledged Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation;

(iv) Take possession of the Pledged Collateral or any part thereof, by directing any Pledgor in writing to deliver the same to the Administrative Agent at any place or places so designated by the Administrative Agent, in which event such Pledgor shall at its own expense: (A) forthwith cause the same to be moved to the place or places designated by the Administrative Agent and therewith delivered to the Administrative Agent, (B) store and keep any Pledged Collateral so delivered to the Administrative Agent at such place or places pending further action by the Administrative Agent and (C) while the Pledged Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition. Each Pledgor's obligation to deliver the Pledged Collateral as contemplated in this Section 9.1(iv) is of the essence hereof. Upon application to a court of equity having jurisdiction, the Administrative Agent shall be entitled to a decree requiring specific performance by any Pledgor of such obligation;

(v) Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of any Pledgor constituting Pledged Collateral for application to the Secured Obligations as provided in Article X hereof;

(vi) Retain and apply the Distributions to the Secured Obligations as provided in Article X hereof;

(vii) Exercise any and all rights as beneficial and legal owner of the Pledged Collateral, including perfecting assignment of and exercising any and all voting, consensual and other rights and powers with respect to any Pledged Collateral; and

(viii) Exercise all the rights and remedies of a secured party on default under the UCC, and the Administrative Agent may also in its sole discretion, without notice except as specified in Section 9.2 hereof, sell, assign or grant a license to use the Pledged Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Administrative Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as are commercially reasonable. The Administrative Agent or any other Secured Party or any of their respective Affiliates may be the

purchaser, licensee, assignee or recipient of the Pledged Collateral or any part thereof at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Pledged Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such person as a credit on account of the purchase price of the Pledged Collateral or any part thereof payable by such person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of any Pledgor, and each Pledgor hereby waives, to the fullest extent permitted by law, all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Administrative Agent shall not be obligated to make any sale of the Pledged Collateral or any part thereof regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Pledgor hereby waives, to the fullest extent permitted by law, any claims against the Administrative Agent arising by reason of the fact that the price at which the Pledged Collateral or any part thereof may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Administrative Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree.

SECTION 9.2. Notice of Sale. Each Pledgor acknowledges and agrees that, to the extent notice of sale or other disposition of the Pledged Collateral or any part thereof shall be required by law, ten (10) days' prior notice to such Pledgor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to any Pledgor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

SECTION 9.3. Waiver of Notice and Claims. Each Pledgor hereby waives, to the fullest extent permitted by applicable law, notice or judicial hearing in connection with the Administrative Agent's taking possession or the Administrative Agent's disposition of the Pledged Collateral or any part thereof upon the occurrence and during the continuation of an Event of Default, including any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which such Pledgor would otherwise have under law, and each Pledgor hereby further waives, to the fullest extent permitted by applicable law: (i) all damages occasioned by such taking of possession, (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Administrative Agent's rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law. The Administrative Agent shall not be liable for any incorrect or improper payment made pursuant to this Article IX in the absence of gross negligence or willful misconduct on the part of the Administrative Agent. Any sale of, or the grant of options to purchase, or any other realization upon, any Pledged Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Pledgor therein and thereto,

and shall be a perpetual bar both at law and in equity against such Pledgor and against any and all persons claiming or attempting to claim the Pledged Collateral so sold, optioned or realized upon, or any part thereof, from, through or under such Pledgor.

**SECTION 9.4. Certain Sales of Pledged Collateral.**

(a) Each Pledgor recognizes that, by reason of certain prohibitions contained in law, rules, regulations or orders of any Governmental Authority, the Administrative Agent may be compelled, with respect to any sale of all or any part of the Pledged Collateral, to limit purchasers to those who meet the requirements of such Governmental Authority. Each Pledgor acknowledges that any such sales may be at prices and on terms less favorable to the Administrative Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable law, the Administrative Agent shall have no obligation to engage in public sales.

(b) Each Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act, and applicable state securities laws, the Administrative Agent may be compelled, with respect to any sale of all or any part of the Securities Collateral and Investment Property, to limit purchasers to persons who will agree, among other things, to acquire such Securities Collateral or Investment Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to the Administrative Agent than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Administrative Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral or Investment Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would agree to do so.

(c) If the Administrative Agent determines to exercise its right to sell any or all of the Securities Collateral or Investment Property, upon written request, the applicable Pledgor shall determine and inform the Administrative Agent of the number of securities included in the Securities Collateral or Investment Property which may be sold by the Administrative Agent as exempt transactions under the Securities Act and the rules of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

(d) Each Pledgor further agrees that a breach of any of the covenants contained in this Section 9.4 will cause irreparable injury to the Administrative Agent and the other Secured Parties, that the Administrative Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 9.4 shall be specifically enforceable against such Pledgor, and such

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Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing.

### SECTION 9.5. No Waiver; Cumulative Remedies.

(a) No failure on the part of the Administrative Agent to exercise, no course of dealing with respect to, and no delay on the part of the Administrative Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power, privilege or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy; nor shall the Administrative Agent be required to look first to, enforce or exhaust any other security, collateral or guaranties. All rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies provided by law or otherwise available.

(b) In the event that the Administrative Agent shall have instituted any proceeding to enforce any right, power, privilege or remedy under this Agreement or any other Security Document by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Administrative Agent, then and in every such case, the Pledgors, the Administrative Agent and each other Secured Party shall be restored to their respective former positions and rights hereunder with respect to the Pledged Collateral, and all rights, remedies, privileges and powers of the Administrative Agent and the other Secured Parties shall continue as if no such proceeding had been instituted.

SECTION 9.6. Certain Additional Actions Regarding Intellectual Property. Subject to the Burger King Rights, if any Event of Default shall have occurred and be continuing, upon the written demand of the Administrative Agent, each Pledgor shall execute and deliver to the Administrative Agent an assignment or assignments of the registered Patents, Trademarks and/or Copyrights and Goodwill and such other documents as are necessary or appropriate to carry out the intent and purposes hereof; *provided* that such assignments shall cease to be valid and shall become void at such time as all Events of Default have been cured or waived in accordance with the Credit Agreement. Within five (5) Business Days of written notice thereafter from the Administrative Agent, each Pledgor shall make available to the Administrative Agent, to the extent within such Pledgor's power and authority, such personnel in such Pledgor's employ on the date of the Event of Default as the Administrative Agent may reasonably designate to permit such Pledgor to continue, directly or indirectly, to produce, advertise and sell the products and services sold by such Pledgor under the registered Patents, Trademarks and/or Copyrights, and such persons shall be available to perform their prior functions on the Administrative Agent's behalf.

### SECTION 9.7. [Reserved]

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SECTION 9.8. Actions of Administrative Agent. The Applicable Authorized Representative shall direct the Administrative Agent in exercising any right, power, discretionary duty or other remedy available to the Administrative Agent under this Agreement or any Security Document and the other Secured Parties shall not have a right to take any actions with respect to the Pledged Collateral or Mortgaged Property. If the Administrative Agent shall not have received appropriate instruction within 10 days of a request therefor from the Applicable Authorized Representative (or such shorter period as reasonably may be specified in such notice or as may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action as it shall deem to be in the best interests of the Secured Parties and the Administrative Agent shall have no liability to any Person for such action or inaction. "Applicable Authorized Representative" shall mean the Administrative Agent so long as the Obligations under the Credit Agreement constitute Secured Obligations hereunder.

## ARTICLE X

### APPLICATION OF PROCEEDS

SECTION 10.1. Application of Proceeds. The proceeds received by the Administrative Agent in respect of any sale of, collection from or other realization upon all or any part of the Pledged Collateral or Mortgaged Property pursuant to the exercise by the Administrative Agent of its remedies shall be applied as set forth in Section 2.11(b) of the Credit Agreement.

## ARTICLE XI

### MISCELLANEOUS

SECTION 11.1. Concerning Administrative Agent and the other Security Documents.

(a) The Administrative Agent has been appointed as administrative agent pursuant to the Credit Agreement. The actions of the Administrative Agent hereunder are subject to the provisions of the Credit Agreement. The Administrative Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including the release or substitution of the Pledged Collateral or Mortgaged Property), in accordance with this Agreement, the Credit Agreement, the other Security

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Documents and the other Credit Documents. The Administrative Agent may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence of any such agents or attorneys-in-fact selected by it in good faith. The Administrative Agent may resign in the manner provided in the Credit Agreement. A successor Administrative Agent may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as the Administrative Agent by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent under this Agreement and the other Security Documents, and the retiring Administrative Agent shall thereupon be discharged from its duties and obligations under this Agreement and the other Security Documents. After any retiring Administrative Agent's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Administrative Agent.

(b) The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral or Mortgaged Property in its possession if such Pledged Collateral or Mortgaged Property is accorded treatment substantially equivalent to that which the Administrative Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Administrative Agent nor any of the Secured Parties shall have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Securities Collateral, whether or not the Administrative Agent or any other Secured Party has or is deemed to have knowledge of such matters or (ii) taking any necessary steps to preserve rights against any person with respect to any Pledged Collateral or Mortgaged Property.

(c) The Administrative Agent shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Agreement and the other Security Documents and its duties hereunder and thereunder, upon advice of counsel selected by it.

(d) If any item of Pledged Collateral or Mortgaged Property also constitutes collateral granted to the Administrative Agent under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, the Administrative Agent, in its sole discretion, shall select which provision or provisions shall control.

(e) Anything herein contained to the contrary notwithstanding, (i) each Pledgor shall remain liable under this Agreement and under each of the underlying contracts described herein to which such Pledgor is a party to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Administrative Agent or the Secured Parties of any of their rights, remedies or powers hereunder shall not release any Pledgor from any of its duties or obligations under this Agreement or such

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underlying contracts described herein and (iii) neither the Trustee or the Administrative Agent shall have any obligation or liability under such underlying contracts by reason of or arising out of this Agreement, nor shall the Noteholders, the Trustee or the Administrative Agent be obligated to perform any of the obligations or duties of any of the Pledgors hereunder or any of the contracts described herein.

(f) The Administrative Agent shall not be responsible for the existence, genuineness or value of any of the Pledged Collateral or Mortgaged Property or for the validity, perfection, priority or enforceability of the Liens in any of the Pledged Collateral or Mortgaged Property, whether impaired by operation of law or by reason of any of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence or willful misconduct on the part of the Administrative Agent. Nor shall the Administrative Agent be responsible for the validity or sufficiency of the Pledged Collateral or Mortgaged Property or any agreement or assignment contained therein, for the validity of the title of the Pledgors to the Pledged Collateral or Mortgaged Property, for insuring the Pledged Collateral or Mortgaged Property or for the payment of taxes, charges, assessments or Liens upon the Pledged Collateral or Mortgaged Property or otherwise as to the maintenance of the Pledged Collateral or Mortgaged Property.

(g) In the event that the Administrative Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any duty for the benefit of another, which in the Administrative Agent's sole discretion may cause it to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., or otherwise cause it to incur liability under CERCLA or any other federal, state or local law, the Administrative Agent reserves the right, instead of taking such action, to either resign as or arrange for the transfer of the title or control of the asset to a court-appointed receiver. The Administrative Agent shall not be liable to any person for any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Administrative Agent's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of hazardous materials into the environment. If at any time it is necessary or advisable for any real property to be possessed, owned, operated or managed by any person, the Required Lenders shall direct the Administrative Agent to appoint an appropriately qualified person to possess, own, operate or manage, as the case may be, such real property.

(h) In acting under and by virtue of this Agreement and the other Security Documents, the Administrative Agent shall have all of the rights, protections and immunities granted to the Administrative Agent and the Trustee under the Credit Agreement (including but not limited to the right to be indemnified under Section 7.07), and all such rights, protections and immunities are incorporated by reference herein, *mutatis mutandis*.

(i) Notwithstanding anything in this Agreement to the contrary and for the avoidance of doubt, the Administrative Agent shall have no duty to act outside of the United States in respect of any collateral located in another jurisdiction other than the United States.

SECTION 11.2. Administrative Agent May Perform; Administrative Agent Appointed Attorney-in-Fact. If any Pledgor shall fail to perform any covenants contained in this Agreement (including such Pledgor's covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay and discharge any taxes, assessments and special assessments, levies, fees and governmental charges imposed upon or assessed against, and landlords', carriers', mechanics', workmen's, repairmen's, laborers', materialmen's, suppliers' and warehousemen's Liens and other claims arising by operation of law against, all or any portion of the Pledged Collateral or Mortgaged Property, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of such Pledgor under any Pledged Collateral or Mortgaged Property) or if any representation or warranty on the part of any Pledgor contained herein shall be breached, the Administrative Agent may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that the Administrative Agent shall in no event be bound to inquire into the validity of any tax, Lien, imposition or other obligation which such Pledgor fails to pay or perform as and when required hereby and which such Pledgor does not contest in accordance with the provisions of the Credit Agreement. Any and all amounts so expended by the Administrative Agent shall be paid by the Pledgors in accordance with the provisions of Section 7.7 of the Credit Agreement. Neither the provisions of this Section 11.2 nor any action taken by the Administrative Agent pursuant to the provisions of this Section 11.2 shall prevent any such failure to observe any covenant contained in this Agreement nor any breach of representation or warranty from constituting an Event of Default. Each Pledgor hereby appoints the Administrative Agent its attorney-in-fact, with full power and authority in the place and stead of such Pledgor and in the name of such Pledgor, or otherwise, from time to time in the Administrative Agent's discretion to take any action and to execute any instrument consistent with the terms of the Credit Agreement, this Agreement and the other Security Documents which the Administrative Agent may deem necessary or advisable to accomplish the purposes hereof (but the Administrative Agent shall not be obligated to and shall have no liability to such Pledgor or any third party for failure to so do or take action). The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. Each Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 11.3. Continuing Security Interest; Assignment. This Agreement shall create a continuing security interest in the Pledged Collateral and shall (i) be binding upon the Pledgors, their respective successors and assigns and (ii) inure, together with the rights and remedies of the Administrative Agent hereunder, to the benefit of the Administrative Agent and the other Secured Parties and each of their respective successors, transferees and assigns. No other persons (including any other creditor of any Pledgor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Secured Party may assign or otherwise transfer any indebtedness held by it secured by this Agreement to any other person, and such other person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party, herein or otherwise, subject however, to the provisions of the Credit Agreement. Each of the Pledgors agrees that its

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obligations hereunder and the security interest created hereunder shall continue to be effective or be reinstated, as applicable, if at any time payment, or any part thereof, of all or any part of the Secured Obligations is rescinded or must otherwise be restored by the Secured Party upon the bankruptcy or reorganization of any Pledgor or otherwise.

SECTION 11.4. Termination; Release. When all the Secured Obligations have been paid in full (other than contingent liabilities not then due and payable), this Agreement shall terminate. Upon termination of this Agreement the Pledged Collateral shall be released from the Lien of this Agreement. Upon such release or any release of Pledged Collateral or any part thereof in accordance with the provisions of the Credit Agreement, the Administrative Agent shall, upon the request and at the sole cost and expense of the Pledgors, assign, transfer and deliver to Pledgor, against receipt and without recourse to or warranty by the Administrative Agent, such of the Pledged Collateral or any part thereof to be released (in the case of a release) as may be in possession of the Administrative Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Pledged Collateral, proper documents and instruments acknowledging the termination hereof or the release of such Pledged Collateral, as the case may be.

SECTION 11.5. Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Pledgor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Credit Agreement and unless in writing and signed each of the parties hereto and in compliance with the terms of the Intercreditor Agreement (including, without limitation, Section 8.3 thereof). The Administrative Agent shall be entitled to receive an Opinion and Officers' Certificate stating that such amendment, modification, supplement or waiver is authorized or permitted by the Credit Agreement, this Security Agreement and any other Credit Document and that all conditions precedent to the execution of such have been satisfied. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Pledgor from the terms of any provision hereof in each case shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement or any other document evidencing the Secured Obligations, no notice to or demand on any Pledgor in any case shall entitle any Pledgor to any other or further notice or demand in similar or other circumstances.

SECTION 11.6. Notices. Unless otherwise provided herein or in the Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Credit Agreement, as to any Pledgor, addressed to it at the address of the Borrower set forth in the Credit Agreement, as to the Administrative Agent, addressed to it at the address set forth in the Credit Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 11.6.

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SECTION 11.7. Governing Law, Consent to Jurisdiction and Service of Process; Waiver of Jury Trial. Sections 9.12, 9.13 and 9.16 of the Credit Agreement are incorporated herein, *mutatis mutandis*, as if a part hereof.

SECTION 11.8. Severability of Provisions. Any provision hereof which is invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating the remaining provisions hereof or affecting the validity, legality or enforceability of such provision in any other jurisdiction.

SECTION 11.9. Execution in Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. Delivery of any executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 11.10. Business Days. In the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 11.11. No Credit for Payment of Taxes or Imposition. No Pledgor shall be entitled to any credit against the principal, premium, if any, or interest payable under the Credit Agreement, and no Pledgor shall be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Taxes on the Pledged Collateral or Mortgaged Property or any part thereof.

SECTION 11.12. No Claims Against Administrative Agent. Nothing contained in this Agreement shall constitute any consent or request by the Administrative Agent, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Pledged Collateral or Mortgaged Property or any part thereof, nor as giving any Pledgor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Administrative Agent in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

SECTION 11.13. No Release. Nothing set forth in this Agreement or any other Security Document, nor the exercise by the Administrative Agent of any of the rights or remedies hereunder, shall relieve any Pledgor from the performance of any term, covenant, condition or agreement on such Pledgor's part to be performed or observed under or in respect of any of the Pledged Collateral or Mortgaged Property or from any liability to any person under or in respect of any of the Pledged Collateral or Mortgaged Property or shall impose any obligation on the Administrative Agent or any other Secured Party to perform or observe any such term, covenant, condition or agreement on such Pledgor's part to be so performed or observed or shall impose any liability on the Administrative Agent or any other Secured Party for any act or omission on the part of such Pledgor relating thereto or for any breach of any representation or warranty on the part of such Pledgor contained in this Agreement, the Credit Agreement, the other Security Documents and any other Credit Documents or under or in respect of the Pledged Collateral or Mortgaged Property or made in connection herewith or therewith. Anything herein to the contrary notwithstanding, neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any contracts, agreements and other documents included in the Pledged Collateral by reason of this Agreement, nor shall the Administrative Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Pledgor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Pledged Collateral hereunder. The obligations of each Pledgor contained in this Section 11.13 shall survive the termination hereof and the discharge of such Pledgor's other obligations under this Agreement, the Credit Agreement and the other Security Documents.

SECTION 11.14. Obligations Absolute. All obligations of each Pledgor hereunder shall be absolute and unconditional irrespective of:

- (i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any other Pledgor;
- (ii) any lack of validity or enforceability of the Credit Agreement, any Security Document or any other Credit Document, or any other agreement or instrument relating thereto;
- (iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any Security Document, any other Credit Document, or any other agreement or instrument relating thereto;
- (iv) any pledge, exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;
- (v) any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect hereof, the Credit Agreement, any Security Document, any other Credit Document, or any other agreement or instrument relating thereto except as specifically set forth in a waiver granted pursuant to the provisions of Section 11.5 hereof; or
- (vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any Pledgor.

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IN WITNESS WHEREOF, each Pledgor and the Administrative Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

CARROLS RESTAURANT GROUP, INC.,  
as Pledgor

By: /s/ William E. Myers  
Name: William E. Myers  
Title: VP, Secretary and General Counsel

CARROLS CORPORATION,  
as Guarantor and Pledgor

By: /s/ William E. Myers  
Name: William E. Myers  
Title: VP, Secretary and General Counsel

CARROLS LLC,  
as Guarantor and Pledgor

By: /s/ William E. Myers  
Name: William E. Myers  
Title: VP, Secretary and General Counsel

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent

By: /s/ Darcy McLaren

Name: Darcy McLaren

Title: Director

**AMENDMENT NO. 1 TO ASSET PURCHASE AGREEMENT**

This AMENDMENT NO. 1 TO ASSET PURCHASE AGREEMENT (this "Amendment") is dated as of May 30, 2012, by and among **Burger King Corporation**, a Florida corporation ("Seller"), **Carrols LLC**, a Delaware limited liability company ("Buyer"), and **Carrols Restaurant Group, Inc.**, a Delaware corporation ("Parent").

WHEREAS, Seller, Buyer and Parent entered into that certain Asset Purchase Agreement dated as of March 26, 2012 (the "Purchase Agreement");

WHEREAS, pursuant to Section 12.1 of the Purchase Agreement, the Purchase Agreement may not be modified or amended except by written instrument executed by each of the parties thereto; and

WHEREAS, Seller, Buyer and Parent wish to amend the Purchase Agreement in accordance with the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller, Buyer and Parent hereby agree as follows:

Capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the Purchase Agreement.

**1. AMENDMENTS.**

(a) The Purchase Agreement is hereby amended by replacing "\$1,000" with "\$1,500" in the definition of Aggregate Store Bank Amount.

(b) The Purchase Agreement is hereby amended by deleting the first sentence of Section 2.6(a) thereof in its entirety and replacing it with the following:

"On the Closing Date, the Closing Store Inventory Amount shall be determined by physical inventories and counts that Seller shall direct its representatives to conduct at each Subject Restaurant in accordance with this Section 2.6."

(c) The Purchase Agreement is hereby amended by deleting Section 2.8 thereof in its entirety and replacing it with the following:

**"2.8 Allocation of Purchase Price; Tax Treatment.** The Purchase Price (including Assumed Liabilities only to the extent they are liabilities for Federal income tax purposes) will be allocated among the Purchased Assets in accordance with Section 1060 of the Code and the regulations thereunder and the allocations as shall be agreed upon between Buyer and Seller and set forth on a schedule no later than one hundred twenty (120) days following the Closing Date (the "Allocation Schedule"). Buyer and Seller will cooperate with each other in good faith to complete the Allocation Schedule prior to the end of such one hundred twenty (120) day period. If Buyer and Seller cannot agree on the Allocation Schedule within such time frame, any disputes relating to the items or amounts to be shown in the Allocation Schedule shall be referred to the independent public accountants which audit the financial statements of the

Buyer (or such other “Big 4” accounting firm which the parties may agree to use), and the decision of said accountants shall be controlling. Fees charged by said accountants for the resolution of the dispute shall be borne equally by the Buyer and the Seller. Buyer and Seller each agree to file Internal Revenue Service Form 8594, and all federal, state, local and foreign Tax Returns, in accordance with the Allocation Schedule; and in that event, Buyer and Seller each agree to provide the other promptly with any other information reasonably required to complete Form 8594. The parties hereto intend that the transaction contemplated hereby be treated for tax purposes as taxable under Section 1001 of the Code.”

(d) The Purchase Agreement is hereby amended by deleting Section 7.6 thereof in its entirety and replacing it with the following:

**“7.6 Utilities and Contracts.** Seller shall use commercially reasonable efforts to maintain each of the Subject Restaurant’s utility accounts in effect following the Closing Date through the date that is the last day of the month immediately following the month of the Closing Date (the “Utility Termination Date”). By way of example only, if the Closing Date is May 20, 2012, the Utility Termination Date would be June 30, 2012. Prior to the Utility Termination Date, the Seller shall provide such reasonable cooperation, as requested by Buyer, to establish new utility accounts at the Subject Restaurants in the name of the Buyer. For the avoidance of doubt, in no event will Seller be required to transfer any utility accounts and/or related deposits to Buyer. During the period from the Closing Date through the Utility Termination Date, upon receipt of any invoices with respect to the Seller’s utility accounts at the Subject Restaurants, Buyer shall promptly reimburse Seller its pro-rata portion of such invoice (calculated by reference to the number of days following the Closing Date divided by the total number of days covered by such invoice). Buyer and Parent shall indemnify Seller for any Losses incurred by the Seller Indemnitees on account of any amounts owing with respect to such utility accounts relating to fees and expenses incurred thereunder following the Closing Date.”

(e) The Purchase Agreement is hereby amended by adding the following to the end of Section 8.1:

“(a) Within twenty (20) days following the Closing Date, the Seller shall prepare and deliver to Buyer for review, comment and approval the proposed Memorandum of Lease for each Subject Restaurant in Indiana (collectively, the “IN MOLS,” and each, an “IN MOL”) and following approval of the IN MOLS by Buyer and Seller, Seller shall cause within thirty (30) days of the Closing Date, each IN MOL to be duly executed and acknowledged and the original delivered to Buyer (or Buyer’s counsel, if so directed), and Buyer shall have the right to record the IN MOLS; (b) within fifty (50) days following the Closing Date, the Seller shall prepare and deliver to Buyer for review, comment and approval the proposed Memorandum of Lease for each Subject Restaurant not located in Indiana (collectively, the “Other MOLS”) and following approval of the Other MOLS by Buyer and Seller, Seller shall cause within sixty (60) days of the Closing Date, each of the Other MOLS to be duly executed and acknowledged and the original delivered to Buyer (or Buyer’s counsel, if so directed); and (c) within twenty (20) days following the Closing Date, the Seller and Buyer shall re-execute and acknowledge any of the Seller Leases not previously acknowledged to the extent that such acknowledgment is required by applicable Law. Seller agrees to reimburse Buyer fifty percent (50%) of the costs of recording any of the IN MOLS and any transfer taxes required to be paid in connection therewith, such reimbursement to be within fifteen (15) days of delivery by Buyer to Seller of an invoice setting forth such amounts.”

(f) Each of (i) the Seller's Disclosure Schedules and (ii) each Transaction Document (and any schedules and exhibits thereto), as applicable, is hereby amended so that any reference to the address of restaurant # 2419 is updated to be "3000 Island Avenue, Philadelphia, PA."

(g) Section 6.16 of the Seller's Disclosure Schedules is hereby amended and restated to delete the following reference in its entirety and replace it with the word "None":

"The Franchisee Participation Agreement by and between the Coca-Cola Company and Seller with respect to each of the Subject Restaurants constitute all of the Assumed Contracts under the Purchase Agreement."

2. CAPITALIZATION OF PARENT. As of May 30, 2012, 23,161,822 shares of Common Stock are issued and outstanding on a fully diluted basis, and no shares of preferred stock are issued and outstanding.

3. AGREEMENT OTHERWISE UNCHANGED. Except as expressly provided herein, the Purchase Agreement shall remain unchanged and in full force and effect. Each reference to "this Agreement" or "the Purchase Agreement" and words of similar import in the Purchase Agreement and in the agreements and other documents contemplated by the Purchase Agreement shall be a reference to the Purchase Agreement, as amended hereby, and as the same may be further amended, restated, supplemented and otherwise modified and in effect from time to time.

4. MISCELLANEOUS.

a. Governing Law and Venue. THIS AMENDMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF. The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of Florida and the federal courts of the United States of America located in the State of Florida in respect of the interpretation and enforcement of the provisions of this Amendment.

b. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. A facsimile or .pdf signature of any party shall be considered to have the same binding legal effect as an original signature.

\* \* \*

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**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment No. 1 to Asset Purchase Agreement to be duly executed and delivered as of the day and year first above written.

**SELLER:**

BURGER KING CORPORATION

By: /s/ Daniel Schwartz  
Name: Daniel Schwartz  
Title: Chief Financial Officer

**BUYER:**

CARROLS LLC

By: /s/ William E. Myers  
Name: William E. Myers  
Title: Vice President

**PARENT:**

CARROLS RESTAURANT GROUP, INC.

By: /s/ William E. Myers  
Name: William E. Myers  
Title: Vice President

## OPERATING AGREEMENT

**THIS AGREEMENT** is made on May 30, 2012 (“**Effective Date**”) by and among:

- (1) BURGER KING CORPORATION, a corporation organized under the laws of Florida having its principal place of business at 5505 Blue Lagoon Drive, Miami, FL 33126 (“**BKC**”); and
- (2) CARROLS LLC, a limited liability company organized under the laws of Delaware having its principal place of business at 968 James St., Syracuse, NY 13203 (“**Carrols**”).

For the purposes of this Agreement, the above parties shall be individually referred to as a “**Party**” and collectively referred to as the “**Parties**”.

## INTRODUCTION

- A. BKC has acquired the exclusive right to use the unique BURGER KING® System and the Burger King Marks for the development and operation of quick service restaurants known as BURGER KING® Restaurants in the U.S. (“**Restaurants**”).
- B. BKC has established a reputation and image with the public as to the quality of products and services available at Burger King Restaurants, which reputation and image have been and continue to be unique benefits to BKC and its franchisees.
- C. Carrols recognizes the benefits to be derived from being identified with and licensed by BKC and from being able to utilize the Burger King System including the Burger King Marks which BKC makes available to its franchisees.
- D. Carrols has franchising rights to operate certain Burger King Restaurants throughout the United States under existing franchise agreements (“**Existing Franchise Agreements**”) and is currently a franchisee of BKC operating approximately 300 Restaurants in the U.S. under the Existing Franchise Agreements (“**Existing Carrols Restaurants**”).
- E. Carrols has requested BKC to grant Carrols the right to develop, acquire, remodel, open and operate additional Restaurants in the U.S.
- F. Carrols acknowledges that it is entering into this Agreement after having made an independent investigation of BKC’s operations and not upon any representation as to the profits and/or sales volumes which it might be expected to realize, or upon any representations or promises made by BKC or any person on its behalf which are not contained in this Agreement.
- G. BKC is transferring to Carrols 278 of its company Restaurants as listed on **SCHEDULE A-1** attached hereto and made a part hereof (“**Transferred Restaurants**”) in a single refranchising transaction (the “**Refran**”) occurring on the Effective Date, pursuant to that certain Asset Purchase Agreement, dated as of March 26, 2012, by and among BKC, Carrols, and Carrols Restaurant Group, Inc. (the “**Asset Purchase Agreement**”).

- H. Carrols intends to remodel the Existing Carrols Restaurants as well as the Transferred Restaurants, to close certain Restaurants and also currently plan to grow their portfolio of Restaurants via new restaurant development and acquisition of Restaurants operated by other franchisees of BKC.

#### **ARTICLE I: TERM**

Unless terminated earlier as provided herein, this Agreement shall expire twenty (20) years from the Effective Date (“**Term**”) or the date that Carrols has 1,000 Restaurants in its portfolio, whichever comes first. Except as provided herein, Carrols and BKC have no right to any extension or renewal of this Agreement.

#### **ARTICLE II: FRANCHISE AGREEMENTS**

2.1 On the Effective Date, Carrols and BKC will enter into new franchise agreements (“**New Franchise Agreements**”) for all of the Transferred Restaurants. The New Franchise Agreements shall provide for: (a) a 4.5% Royalty payment; (b) a 4% Advertising Contribution payment to BKC; (c) a commitment to investment spending during the term of no less than 0.75% of gross sales in each of the DMAs (provided that if any investment spending contract approved by 66.7% of the franchisees in a DMA calls for investment spending of less than 0.75% of gross sales, FRANCHISEE shall only be obligated to investment spending in the amount set forth in such investment spending contract); (d) a term length as set forth on **SCHEDULE A-1** attached hereto and made a part hereof; and (e) shall otherwise be in form and content as set forth on **SCHEDULE A-2** attached hereto and made a part hereof.

2.2 On the Effective Date, Carrols and BKC will amend the Existing Franchise Agreements to add a commitment by Carrols to collective investment spending during the term of each of the Existing Franchise Agreements of no less than 0.75% of gross sales in each of the DMAs (provided that if any investment spending contract approved by 66.7% of the franchisees in a DMA calls for investment spending of less than 0.75% of gross sales, FRANCHISEE shall only be obligated to investment spending in the amount set forth in such investment spending contract) all in form and content as set forth on **SCHEDULE 2** attached hereto and made a part hereof.

#### **ARTICLE III: GRANT**

BKC grants Carrols a non-exclusive right to develop Restaurants within the specific geographic areas set forth on **SCHEDULE 3** attached hereto and made a part hereof (“**DMAs**”). Except to the extent that the Franchise Pre-Approval rights set forth in Section 4.6 hereof apply, Carrols will submit proposed target areas within the DMAs to BKC for approval and such target areas will not be final until BKC grants written confirmation of clearance pursuant to the development process described in Article IV below. The Parties will review the target areas as needed throughout the term of this Agreement and may make amendments to the target areas as mutually agreed in writing by the Parties. No exclusive rights are granted to Carrols in this Agreement. Carrols acknowledges that BKC has Target Reservation Agreements, Multiple Target Reservation Agreements and other forms of agreements with other franchisees for Restaurants at institutional locations, including, but not limited to, public buildings, schools, hospitals, airports, factories, turnpikes, toll roads, universities, and existing or hereafter established U.S. Military establishments; and rights or approvals previously granted by BKC to other persons or entities are not affected by this Agreement.

**ARTICLE IV: DEVELOPMENT PROCEDURE**

4.1 Franchise Approval. Carrols must apply for and meet BKC's current operational, financial, credit, legal and other criteria for developing and operating a new Restaurant (hereinafter referred to as "**Franchise Approval**") applicable to all U.S. franchisees of BKC for Restaurants ("**BKC Franchisees**"). Carrols understands and accepts that BKC may change its criteria for Franchise Approval as it applies to all BKC Franchisees during the term of this Agreement.

4.2 Site Approval.

4.2.1 Site Approval Process. After obtaining Franchise Approval, Carrols shall apply for and obtain site approval from BKC for any site on which Carrols proposes to construct a Restaurant under this Agreement in accordance with BKC's standard site approval procedures applicable to all BKC Franchisees (hereinafter referred to as "**Site Approval**"). Site Approval is a prerequisite to authorization by Carrols to construct a Restaurant at a particular location. Carrols shall commence the Site Approval process by completing and submitting to BKC the then current form of BKC's "Site Acquisition Package" with a request for Site Approval. BKC agrees to notify Carrols of BKC's decision to grant or deny Site Approval within 30 days of receipt of a completed Site Acquisition Package and all other requested information. Carrols acknowledges that Site Approval can be granted only by means of a written approval duly executed by an authorized representative of BKC and no other approval, whether oral or written, shall be effective or binding on BKC. Carrols shall not, except at their own risk, enter into any binding real estate contracts for a property for which Carrols is seeking Site Approval until BKC has given Site Approval in writing.

4.2.2 Denial of Site Approval. Without limiting any of the foregoing, Carrols acknowledges that BKC may, in its sole discretion, deny Site Approval for any site if, for any reason, the site does not meet BKC's criteria for Site Approval. If BKC believes in its sole and absolute discretion that development of a Restaurant at the site proposed by Carrols will have a material and unreasonable impact upon sales to or at an existing Restaurant operated by BKC or another BKC Franchisee, BKC may, in its sole discretion, deny Site Approval. Carrols agrees to participate and cooperate in any mediation or arbitration conducted pursuant to the BKC Procedures for Resolving Development Disputes in the event an objection is received by BKC from another BKC Franchisee in connection with the development of a site.

4.3 Construction Approval. After obtaining Site Approval, the following requirements relating to site acquisition and construction shall apply.

(a) Carrols assumes all responsibility for locating, acquiring and developing the real estate site and for construction of the Restaurant to be developed, at no cost, liability or expense to BKC. If Carrols acquires a leasehold interest in the site, such lease shall be for a term extending at least through the then current term of the Franchise Agreement applicable to the site.

(b) Any Restaurant shall be constructed to BKC's 20/20 Image Standards (or BKC's then Current Image standard, if higher) in a manner authorized and approved by BKC and equipped and furnished in accordance with BKC approved plans and specifications (which equipment, furnishings, and approval of plans and specifications shall be consistent with and no more onerous than the criteria applicable to all BKC Franchisees), subject to local planning and contractual restrictions.

(c) BKC shall make available to Carrols, for its information, BKC's standard plans and specifications for Restaurants. If Carrols requires architectural and engineering services, then Carrols shall contract for those services independently at its own expense. Carrols shall, as a condition precedent to the development of a Restaurant, obtain from BKC prior written architectural and design approval of the Carrols plans (hereinafter referred to as "**Construction Approval**"). Any subsequent material changes to the approved plans must be approved by BKC's Vice President of Development. BKC must approve the type of facility, site layout, and equipment configuration for the restaurant to be developed hereunder, including the building design, style, size and interior décor, as well as the type of equipment, service format and equipment arrangement for any restaurant, which may be changed, amended or modified by BKC from time to time (provided that any such modification shall be consistent with and no more onerous than the criteria applicable to all BKC Franchisees). The above notwithstanding, Carrols shall be responsible for constructing the Restaurant in accordance with all federal, state and local statutes, laws, regulations and codes.

4.4 No Franchise Without Site Approval. Nothing in this Agreement shall be construed as obligating BKC to grant a Franchise Agreement for any site which has not been approved or in a case in which the completed building does not conform to plans and specifications as approved by BKC.

4.5 No Representation Regarding Site. Carrols agrees that BKC's approval of any site or BKC's approval of any specifications or other matters relating to the development of a Restaurant does not amount to a representation or warranty relating directly or indirectly to the success or viability of the Restaurant. Carrols shall not rely upon any warranty, representation or advice that may be given by any person by or on behalf of BKC directly or indirectly relating to the success or viability of a Restaurant, unless such representation, warranty or advice is given, in writing, by a member of the board of directors of BKC.

4.6 Franchise Pre-Approvals. Notwithstanding anything to the contrary set forth herein, BKC hereby grants Carrols franchise pre-approval ("**Franchise Pre-Approval**") to expand in the Burger King system by building new Restaurants or acquiring Restaurants from other franchisees in the DMAs. Franchise Pre-Approval will expire at such time the Carrols portfolio contains 1,000 operating Restaurants. The purpose of Franchise Pre-Approval is to facilitate growth transactions via new restaurant growth ("**NRG**") and in no way diminishes Carrols' obligations to obtain Site Approval for all new restaurant builds. Carrols' Franchise Pre-Approval will be suspended for any period of time that (a) Carrols fails to comply with the development procedures in Article IV of this Agreement; (b) Carrols fails to comply with terms of any Franchise Agreement with BKC; (c) at least 90% of Carrols' entire portfolio of Restaurants do not meet or exceed the national average for any of the Operations Metrics (as defined in Section 10.1 of this Agreement) after the Cure Period as set forth in Section 10.3 of this Agreement; or (d) any lawsuits are pending between Carrols and BKC. Such suspension of

Carrols' Franchise Pre-Approval shall automatically end on the date that the Carrols comes into compliance with development procedures and the Article IV of this Agreement, comes back into compliance with all Franchise Agreements with BKC, at least 90% of Carrols' entire portfolio of Restaurants meets or exceeds the national average for each of the Operations Metrics, and pending lawsuits are settled, dismissed, withdrawn, adjudicated by final judgment or order, or are terminated.

4.7 New Restaurant Growth ("NRG"). Carrols shall have no obligation to construct any new Restaurants prior to January 1 of the calendar year following the third anniversary of the Effective Date. Commencing on January 1 of the calendar year following the third anniversary of the Effective Date and for each calendar year thereafter during the term of this Agreement ("**NRG Growth Period**"), a minimum of 10% of the NRG ("**Minimum NRG**") in the Carrols portfolio in each calendar year must come from new Restaurants (including offsets). In the event that Carrols does not meet the Minimum NRG for any calendar year during the NRG Growth Period, Franchise Pre-Approval for the calendar year immediately following will be suspended until such time as Carrols opens a number of new Restaurants equal to the difference between the required Minimum NRG and the actual number of new Restaurants opened by Carrols for such prior calendar year.

#### **ARTICLE V: FRANCHISEE-TO-FRANCHISEE TRANSFERS**

BKC has the right to approve all sales or assignments of Restaurants from one franchisee to another in a Franchisee-to-Franchisee transfer ("**F-to-F**"). BKC's rights in such F-to-F's are granted and limited by the language in the assignment provisions of the U.S. BKC franchise agreement as well as, in some cases, state law. If Carrols negotiates to acquire another franchisee's Restaurants in an F-to-F, such F-to-F requires the approval of BKC which approval is subject to BKC's sole but reasonable discretion and will be granted or denied on a deal by deal basis. Notwithstanding the foregoing or anything else to the contrary set forth herein, in the event Carrols proposes an F-to-F in one of the DMAs where Carrols has Burger King restaurants prior to the F-to-F, then, in such case, Carrols will be deemed to have Franchise Pre-Approval.

#### **ARTICLE VI: RIGHT OF FIRST REFUSAL**

6.1 Right of First Refusal Notification. Pursuant to each Franchise Agreement covering Restaurants, BKC has a right of first refusal ("**ROFR**") to purchase all of the assets constituting the Restaurant or all or substantially all of the voting stock of a franchisee, whether direct or indirect, on the same terms as contained in a purchase agreement between such franchisee and a third party purchaser ("**Purchase Agreement**"). BKC hereby grants to Carrols the exclusive right to each such ROFR in the DMAs on **SCHEDULE 6.1** according to the provisions of this Article VI. During the Term, BKC shall notify Carrols (the "**ROFR Notice**") in writing as soon as possible but in no event more than three business days after each and every time that BKC receives a notice from a franchisee proposing to sell ("**Selling Franchisee**") Restaurants or direct or indirect ownership interests of the franchisee ("**Offered Restaurants**") within the DMAs on **SCHEDULE 6.1**. Additionally, BKC shall provide Carrols with written notice that a Selling Franchisee has sold or transferred its Restaurant or Restaurants or its direct or indirect ownership interests of the franchisee in its Restaurant or Restaurants in violation of the ROFR as soon as possible but in no event more than three business days after each and every time

that BKC receives a notice of the same. Procedures for assignment and exercise of the ROFR will be mutually agreed to be BKC and Carrols. Notwithstanding anything to the contrary set forth herein, Carrols shall not exercise any such ROFR to the extent that BKC elects not to exercise such ROFR based solely upon and in accordance with the terms of the “Policy and Procedure Regarding Change of Ownership Transactions and Franchisee-to-Franchisee Transactions,” dated April 26, 2012 (the “**Policy**”), which shall not be amended without Carrols’ prior written consent. BKC shall also provide Carrols, on a quarterly basis, a list of all Restaurants, identified by BK number, whose assets or direct or indirect equity interests (in whole or part) were transferred during the prior quarter in reliance on the Policy.

6.2 **Fee for ROFR Assignment and Franchise Pre-Approval:** Carrols will pay to BKC Three Million Eight Hundred Four Thousand and Five Hundred Forty-Five Dollars (\$3,804,545.00 for the rights granted to Carrols in this Article VI and the development rights granted to Carrols in Section 4.6 of Article IV of this Agreement (collectively the “**ROFR/Franchise Pre-Approval Payment**”). The ROFR/Franchise Pre-Approval Payment shall be paid to BKC over a five year period in twenty quarterly installment payments of One Hundred Ninety Thousand and Two Hundred Twenty-Seven Dollars (\$190,227.00) (the “**Quarterly ROFR/Franchise Pre-Approval Payment**”). The first of these Quarterly ROFR/Franchise Pre-Approval Payments shall be paid on the date of this Agreement. The Quarterly ROFR/Franchise Pre-Approval Payment must be paid each quarter regardless of whether or not the ROFR has been suspended as described in Article VII hereof or the Franchise Pre-Approval has been suspended as described in Section 4.6 hereof.

## **ARTICLE VII: REMODELING**

Carrols shall remodel its entire portfolio of Restaurants in compliance with the Remodel Plan set forth on **SCHEDULE 7** attached hereto and made a part hereof. BKC’s sole remedy for Carrols’ failure to be in compliance with the Remodel Plan will be the suspension of Carrols’ rights under Article VI by written notice given by BKC to Carrols on or before January 31 of the calendar year following the year on which Carrols does not meet the Remodel Plan. Any such suspension of Article VI rights shall begin in the calendar year following calendar year of such non-compliance, and such suspension shall automatically terminate as soon as Carrols comes back into compliance with the Remodel Plan. Carrols will be deemed in compliance with the Remodel Plan in each calendar year so long as Carrols completes at least 90% of the Remodel Plan for such calendar year. In any calendar year that Carrols completes 90% but less than 100% of the Remodel Plan for that calendar year, Carrols must complete the shortfall of remodels plus 90% of the Remodel Plan for the next calendar year in order to remain in compliance with the Remodel Plan. In any calendar year that Carrols’ rights under Article VI have been suspended under this Article VII, Carrols will be deemed to be back in compliance with the Remodel Plan and all rights under Article VI shall automatically be restored as soon as Carrols completes 100% of the remodels that were required for the calendar year resulting in the suspension of rights under Article VI (assuming that all remodels completed in such subsequent year shall first apply to remedying the prior year’s shortfall). Anything to the contrary in this Agreement or otherwise notwithstanding, for any remodel required under the Remodel

Plan that requires the consent of a master landlord or other third party, if the consent of such master landlord or third party is not obtained Carrols shall not be obligated to undertake such remodel and shall not be deemed in default of this Agreement or the Remodel Plan for not completing such remodel and such site shall be excluded from the calculation to determine whether Carrols has completed the required remodels as provided in this Article VIII.

#### **ARTICLE VIII: CLOSURES/EXTENSIONS**

Carrols and BKC agree to close certain Transferred Restaurants and extend the terms of certain Existing Carrols Restaurants as described in **SCHEDULE 8** attached hereto and made a part hereof.

#### **ARTICLE IX: SHOWS OF SUPPORT/HIYW FOUNDATION**

9.1 Shows of Support. From time to time, BKC polls its franchisees to gauge the level of national support for certain product, price, promotion or marketing initiatives via a "Show of Support" ("**SOS**"). Each of Carrols' Restaurants has one vote in each SOS. As long as (a) BKC has at least one seat on the Board of Directors of Carrols, and (b) BKC reviews the content of such SOS with the CEO of Carrols and allows the CEO to provide comments and input to the SOS prior to the distribution of the SOS to the rest of the Burger King system, Carrols will vote all its Restaurants as a "Yes" vote on any SOS conducted during the Term of this Agreement. The terms and content of any SOS shall remain in the sole discretion of BKC.

9.2 HAVE IT YOUR WAY® Foundation. Carrols will continue to require the Transferred Restaurants to participate in the fundraising and charitable efforts of the HAVE IT YOUR WAY® Foundation (the "**Foundation**") during the thirty-six (36) months following the execution of this Agreement (the "**Three Year Period**") as follows: (a) Carrols will keep the Foundation's cash collection boxes ("**Collection Boxes**") in the Transferred Restaurants for the purpose of collecting customer contributions to the Foundation and for no other charitable entities. If any Collection Boxes are broken or damaged Carrols will replace them as soon as possible and may pay for such replacement Collection Boxes by deducting such cost from cash collections if such a deduction is allowed by the applicable state law; (b) Carrols will provide one \$1,000 scholarship through the BK Scholars Program for each of the 278 Transferred Restaurants and will do so even if the number of Transferred Restaurants operated by Carrols decreases during the Three Year Period due to restaurant closures. Scholarship monies are normally collected in one year and then, due to school year calendars, funded in the following calendar year (the "**Grant Year**"). Therefore, money collected in the Collection Boxes in calendar 2011 will be used to fund scholarships in 2012 and money collected in calendar years 2012, 2013 and 2014 will be used to fund scholarships in the Grant Years 2013, 2014 and 2015 respectively and (c) Carrols require the Transferred Restaurants to continue to participate in all Fall Fundraisers conducted by the Foundation as long as the contributions in the Collection Boxes equal the amount of scholarships committed to by Carrols in (b) above. Under no circumstances will Carrols be required to participate, although they may do so voluntarily, in any other in-restaurant fundraisers above and beyond that which is referenced in (a) and (b) above. Failure to comply with the terms of this section 9 will be an event of default under the franchise agreement for the Transferred Restaurant deemed to not be in compliance.

**ARTICLE X: OPERATIONS METRICS**

10.1 Performance Expectations. In consideration for the rights granted to Carrols by BKC herein, Carrols agrees to operate its Restaurants at or above the U.S. Burger King system's national average (measured on a quarterly basis) for the following operational metrics: (i) Speed of Service; (ii) Operational BKC Visits (OER or its current equivalent); (iii) Food Safety Scores; and (iv) Guest Trac (or the then current guest recovery program) (the "Operations Metrics").

10.2 Grace Period. With regard to the Transferred Restaurants, Carrols will have a six-month grace period commencing on the first day of the first full month following the Effective Date within which to meet the Operations Metrics, with the exception of Food Safety Scores, which must be met on a quarterly basis by the end of the first full completed quarter after the Effective Date.

10.3 Bottom Performers. From and after the grace periods set forth in Section 10.2 above, if more than 10% of Carrols' entire portfolio of Restaurants are rated below the national average for any of the individual Operations Metrics for more than two (2) consecutive quarters, BKC and Carrols shall meet and develop a cure period for and a cure plan ("**Cure Plan**") that details how Carrols will address the operational issues and by what date bring Carrols' performance up to and exceed the national average ("**Cure Period**"). If at least 90% of Carrols' entire portfolio of Restaurants do not meet or exceed the national average for any of the Operations Metrics after the Cure Period, Franchise Pre-Approval for F-to-F Transfers or NRG shall be suspended until such time as at least 90% of Carrols' entire portfolio of Restaurants meets or exceeds the national average for each of the Operations Metrics.

**ARTICLE XI: INDEMNIFICATION**

11.1 Indemnification by Carrols. Except as expressly set forth in this Agreement to the contrary, Carrols is responsible for all losses, damages and/or contractual liabilities to third parties arising out of or relating to any of the obligations, undertakings, promises and representations of Carrols under this Agreement, and for all claims or demands for damages to property or for injury, illness or death of persons directly or indirectly resulting therefrom. Carrols agrees, to the fullest extent provided by law, to defend, indemnify and save BKC and BKC's officers, directors, agents, employees, attorneys, accountants, subsidiaries, affiliates and parent company harmless of, from and with respect to any such claims, demands, losses, obligations, costs, expenses, liabilities, debts or damages (including, without limitation, reasonable attorney's fees).

11.2 Indemnification by BKC. Except as expressly set forth in this Agreement to the contrary, BKC is responsible for all losses, damages and/or contractual liabilities to third parties arising out of or relating to any of the obligations, undertakings, promises and representations of BKC under this Agreement, and for all claims or demands for damages to property or for injury, illness or death of persons directly or indirectly resulting therefrom. BKC agrees, to the fullest extent provided by law, to defend, indemnify and save Carrols and its respective officers, directors, agents, employees, attorneys, accountants, subsidiaries, affiliates and parent company harmless of, from and with respect to any such claims, demands, losses, obligations, costs, expenses, liabilities, debts or damages (including, without limitation, reasonable attorney's fees).

11.3 Indemnification Procedures. Any Party seeking indemnification from the other Party under this Agreement shall give notice of any such claims, and the Party from whom indemnification is sought shall be given the opportunity to assume the defense of the matter. If the Party from whom indemnification is sought fails to assume the defense and is ultimately found to have had the obligation to do so, the Party seeking indemnification may defend the action in the manner it deems appropriate, and upon being found to have had the obligation to do so, the Party from whom indemnification was sought shall pay to the indemnified Party all costs, including reasonable attorney fees, incurred by the indemnified Party in effecting such defense. The rights to indemnity under this Agreement shall arise and be valid notwithstanding that joint or concurrent liability may be imposed by statute, ordinance, regulation or other law.

## **ARTICLE XII: SEVERABILITY**

If any of the provisions of this Agreement may be construed in more than one way, one of which would render the provision illegal or otherwise void, voidable or unenforceable, such provision shall have the meaning which renders it valid and enforceable. This Agreement shall be construed according to its fair meaning and not strictly against any Party. If any court or other government authority determines that any provision is not enforceable as written, the Parties agree that the provision shall be amended so that it is enforceable to the fullest extent permissible under the laws and public policies of the jurisdiction in which enforcement is sought and affords the Parties the same basic rights and obligations and has the same economic effect. If any provision is held invalid or otherwise unenforceable, such findings shall not invalidate the remainder of the agreement.

## **ARTICLE XIII: MISCELLANEOUS**

13.1 Notice. Any notice shall be in writing and shall be delivered or sent by registered or certified mail postage fully prepaid or by national overnight courier service for overnight delivery, if to BKC to: Burger King Corporation, 5505 Blue Lagoon Drive, Miami, Florida 33126, Attn: General Counsel, if to Carrols: Carrols, LLC, 968 James Street, Syracuse, NY 13203, Attn: Daniel Accordino, CEO. All such notices shall be deemed delivered on the earlier of actual receipt or the third (3rd) day after being deposited in the US Mail or the day after being deposited with a national overnight Courier service for overnight delivery.

13.2 Assignment. This Agreement may not be directly or indirectly assigned, transferred or encumbered to a third party by Carrols or BKC.

13.3 Non-Waiver. Failure of any Party to insist upon strict performance of any terms of this Agreement shall not be deemed a waiver of any subsequent breach or default. Acceptance by any Party of any money under this Agreement or under any Franchise Agreement shall not constitute a waiver of any breach or default of this Agreement or any Franchise Agreement.

13.4 Relationship of Parties. The Parties to this Agreement are not partners, joint venturers, or agents of each other and there is no fiduciary relationship between the Parties. BKC does not have the right to bind or obligate Carrols in any way and shall not represent that it has any such right, and Carrols does not have the right to bind or obligate BKC in any way and shall not represent that they have any such right. This Agreement is not a franchise for the operation of a BURGER KING restaurant.

13.5 Governing Law/Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The Parties hereto acknowledge and agree that the United States District Court for the Southern District Court of Florida, or if such court lacks jurisdiction, the 11th Judicial Court (or its successor) in and for Miami-Dade County, Florida, shall be the venue and exclusive proper forum in which to adjudicate any case or controversy arising, either directly or indirectly, under or in connection with this Agreement, any Franchise Agreements or related documentation and any other agreement between the Parties, and the Parties further agree that, if litigation arises out of, or in connection with this Agreement, any Franchise Agreements, or related documentation or any other agreement between the Parties in these courts, they will not contest or challenge the personal jurisdiction or venue of these courts.

13.6 Incorporation of Recital, Preamble, and Whereas Paragraphs. The recital, preamble, and whereas paragraphs set forth above are incorporated herein by this reference with the same force and effect as if they were more specifically set forth herein.

13.7 Impossibility. If any Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, terrorism, acts of enemies, strikes, lockouts, labor troubles, inability to procure materials, laws, adverse weather, unusual delay in transportation or other cause without fault and beyond the control of the Party obligated (financial inability excepted), then upon written notice to the other Party, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay; provided, however, the Party so delayed shall exercise its best efforts to remedy any such cause of delay or cause preventing performance.

13.8 Binding Nature. All of the covenants, agreements, terms and conditions to be observed and performed by the Parties hereto shall be applicable to and binding upon their respective successors and permitted assigns.

13.9 Enforcement. If any Party hereto fails to perform its obligations under this Agreement, or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement and any action or steps are taken in furtherance thereof including, but not limited to, the commencement of legal proceedings, lawsuits, arbitration, or other proceedings arising out of, relating to, or based in any way on this Agreement, including without limitation, tort actions and actions for injunctive and declaratory relief, the non-prevailing Party in the dispute shall pay any and all actual reasonable costs and expenses incurred by the prevailing Party in enforcing or establishing its rights hereunder, including, without limitation, all court costs, all fees and costs incurred in any appellate process, and all actual attorney's fees and in-house counsel costs and the costs of paralegals. For purposes of calculating the value of in-house counsel under this Agreement, it is agreed and established that in-house counsel shall have a billable rate of three hundred fifty and no/100 dollars (\$350.00) per hour or any fraction thereof.

13.10 Counterpart Execution. To facilitate execution, this Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all Parties hereto be contained on any one counterpart hereof. Additionally, the Parties hereto hereby covenant and agree that, for purposes of facilitating the execution of this Agreement, (a) the signature pages taken from separate individually executed counterparts of

this Agreement may be combined to form multiple fully executed counterparts and (b) a facsimile or PDF or electronic form of signature shall be deemed to be an original signature. All executed counterparts of this Agreement shall be deemed to be originals, but all such counterparts taken together shall constitute one and the same agreement.

13.11 Dates. If the final date of any deadline under this Agreement falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the words “day” or “days” are used in this Agreement, it shall be considered to mean “calendar days” and not “business days” unless an express statement to the contrary is made.

13.12 Amendment. This Agreement shall not be amended or modified except by a written instrument signed by all Parties.

**Balance of Page Intentionally Left Blank**

**Signature Page to Follow**

THIS AGREEMENT is executed by the Parties as of the day and year indicated on the first page of this Agreement.

**BURGER KING CORPORATION (“BKC”)**

By: /s/ Daniel Schwartz  
Title: Chief Financial Officer  
Printed Name: Daniel Schwartz

**CARROLS LLC**

By: /s/ Daniel T. Accordino  
Title: President and CEO  
Printed Name: Daniel T. Accordino

**FIRST AMENDMENT  
TO  
VOTING AGREEMENT**

This **FIRST AMENDMENT TO VOTING AGREEMENT** (the "Amendment"), is dated effective as of May 30, 2012, and entered into by and among Carrols Restaurant Group, Inc., a Delaware corporation (the "Company"), Jefferies Capital Partners IV L.P., a Delaware limited partnership ("Jefferies Capital Partners IV"), Jefferies Employee Partners IV LLC, a Delaware limited liability company ("Jefferies Employee Partners"), and JCP Partners IV LLC, a Delaware limited liability company (together with Jefferies Capital Partners IV and Jefferies Employee Partners, "Jefferies Capital Partners").

**RECITALS:**

**WHEREAS**, the Company and Jefferies Capital Partners entered into that certain Voting Agreement, dated as of July 27, 2011 (the "Original Agreement");

**WHEREAS**, the Spin-Off has been consummated;

**WHEREAS**, the Company, Carrols LLC, a Delaware limited liability company and wholly-owned subsidiary of the Company ("Purchaser") and Burger King Corporation, a Florida corporation ("Seller") have entered into that certain Asset Purchase Agreement, dated as of March 26, 2012 (the "APA"), pursuant to which, among other things, the Purchaser shall purchase certain assets from and assume certain liabilities of Seller and, as partial consideration therefore, the Company shall issue to Seller 100 shares (the "Seller Shares") of Series A Convertible Preferred Stock of the Company, par value \$0.01 per share ("Preferred Stock") (the transactions contemplated by the APA, the "Transaction");

**WHEREAS**, upon conversion, the Seller Shares shall be convertible into a number of shares of common stock of the Company (the "Conversion Shares") equal to 28.9% of the issued and outstanding common stock of the Company, par value par value \$0.01 per share ("Common Stock"), on a fully diluted basis as of the closing of the Transaction (after giving effect to the issuance of the Seller Shares);

**WHEREAS**, pursuant to the Certificate of Designation of Series A Convertible Preferred Stock filed by the Company with the Secretary of State of the State of Delaware on May 29, 2012 (the "Certificate of Designation"), the Company may not issue any Conversion Shares to the extent that such shares, after giving effect to such issuance after conversion and when added to the number of shares of Common Stock previously issued upon the conversion of any shares of Preferred Stock, would exceed the Maximum Number (as such term is defined in the Certificate of Designation), unless and until the Company obtains stockholder approval removing such restrictions and permitting such issuances in accordance with applicable NASDAQ Stock Market Rules ("Stockholder Approval");

**WHEREAS**, entry into this Amendment is a condition to closing of the Transaction and a material inducement for Seller entering into the Purchase Agreement; and

**WHEREAS**, the parties hereto desire to amend the Original Agreement as hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

**1. Capitalized Terms.** Capitalized terms used and defined in this Amendment shall have the meanings assigned to them in this Amendment (including those in the recital paragraphs), and capitalized terms used in this Amendment and not defined herein shall have the meanings assigned to them in the Original Agreement, in each case, unless the context clearly requires otherwise.

**2. Amendments.** The Original Agreement is hereby amended as follows:

(a) Section 2.1 of the Original Agreement shall be deleted in its entirety and replaced with the following:

2.1 VOTING ON PARTICULAR MATTERS. Jefferies Capital Partners hereby agrees at all times on and after the Spin-Off Effective Date to vote, or cause to be voted, all of the Subject Shares, or give consent in lieu thereof, as follows:

(a) if the matter concerned is a proposed merger, consolidation, reorganization, dissolution or similar transaction of the Company, or a proposed sale or disposition of all or substantially all of the assets or business of the Company (in each case requiring the vote of the shareholders of the Company pursuant to the General Corporation Law of the State of Delaware or otherwise), in the sole and absolute discretion of Jefferies Capital Partners;

(b) if the matter concerned is the Stockholder Approval, in the sole and absolute discretion of Jefferies Capital Partners; and

(c) for all other matters, in the same proportions as the shares of Common Stock voted on such matters, or as to which consent shall have been given in lieu of such vote, by the holders of Common Stock other than Jefferies Capital Partners, taken as a whole.

(b) All references to “Section 2.1(b)” in the Original Agreement are hereby amended to read “Section 2.1(c).”

**3. Ratification and Confirmation.** Except to the extent specifically amended by this Amendment, the parties hereby ratify and confirm the terms and provisions of the Original

Agreement and the Original Agreement remains in full force and effect. All references to “this Agreement” in the Original Agreement shall be deemed as references to this Agreement as amended by this Amendment.

**4. Governing Law.** This Amendment shall be governed and construed in accordance with the laws of the State of Delaware, without reference to conflicts of laws principles.

**5. Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart, and any of the parties hereto may execute this Amendment by signing any such counterpart.

**[Signatures Begin on Next Page]**

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

COMPANY:

CARROLS RESTAURANT GROUP, INC.

By: /s/ William E. Myers  
Name: William E. Myers  
Title: Vice President

[Countersignature Page Follows]

Signature Page to First Amendment to Voting Agreement

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**JEFFERIES CAPITAL PARTNERS:**

JEFFERIES CAPITAL PARTNERS IV L.P.  
JEFFERIES EMPLOYEE PARTNERS IV LLC  
JCP PARTNERS IV LLC

By: Jefferies Capital Partners IV LLC, as Manager

By: /s/ James Luikart

Name:

Title:

Countersignature Page to First Amendment to Voting Agreement

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\$20,000,000

CREDIT AGREEMENT

among

CARROLS RESTAURANT GROUP, INC.,  
as Borrower,

CERTAIN DOMESTIC SUBSIDIARIES OF THE BORROWER  
FROM TIME TO TIME PARTY HERETO,  
as Guarantors,

THE LENDERS PARTY HERETO,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent

Dated as of May 30, 2012

WELLS FARGO SECURITIES, LLC,  
as Sole Lead Arranger and Sole Bookrunner



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Prepared by:

KING & SPALDING

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Schedule 3.16(e)	Pledged Equity Interests
Schedule 3.16(f)(i)	Mortgaged Properties
Schedule 3.16(f)(ii)	Other Collateral Locations
Schedule 3.23	Material Contracts
Schedule 3.24	Insurance
Schedule 3.29	Authorized Officers
Schedule 3.31	Franchise Agreements
Schedule 6.1(b)	Indebtedness

## **Exhibits**

Exhibit 1.1(a)	Form of Account Designation Notice
Exhibit 1.1(b)	Form of Assignment and Assumption
Exhibit 1.1(c)	Form of Joinder Agreement
Exhibit 1.1(d)	Form of Notice of Borrowing
Exhibit 1.1(e)	Form of Notice of Conversion/Extension
Exhibit 1.1(f)	Form of Permitted Acquisition Certificate
Exhibit 1.1(g)	Form of Bank Product Provider Notice
Exhibit 2.1(a)	Form of Funding Indemnity Letter
Exhibit 2.1(e)	Form of Revolving Loan Note
Exhibit 4.1(b)	Form of Officer's Certificate
Exhibit 4.1(g)	Form of Solvency Certificate
Exhibit 4.1(m)	Form of Financial Condition Certificate
Exhibit 5.2(b)	Form of Officer's Compliance Certificate

**THIS CREDIT AGREEMENT**, dated as of May 30, 2012, is by and among **CARROLS RESTAURANT GROUP, INC.**, a Delaware corporation (the “**Borrower**”), the Guarantors (as hereinafter defined), the Lenders (as hereinafter defined) and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, as administrative agent for the Lenders hereunder (in such capacity, the “**Administrative Agent**”).

**W I T N E S S E T H:**

**WHEREAS**, the Credit Parties (as hereinafter defined) have requested that the Lenders make loans and other financial accommodations to the Credit Parties in an aggregate amount of up to \$20,000,000, as more particularly described herein; and

**WHEREAS**, the Lenders have agreed to make such loans and other financial accommodations to the Credit Parties on the terms and conditions contained herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

**Section 1.1 Defined Terms.**

As used in this Agreement, terms defined in the preamble to this Agreement have the meanings therein indicated, and the following terms have the following meanings:

“**Account Designation Notice**” shall mean the Account Designation Notice dated as of the Closing Date from the Borrower to the Administrative Agent in substantially the form attached hereto as Exhibit 1.1(a).

“**Additional Credit Party**” shall mean each Person that becomes a Guarantor by execution of a Joinder Agreement in accordance with Section 5.10.

“**Adjusted Leverage Ratio**” shall mean, as of any date of determination, for the Credit Parties and their Subsidiaries on a Consolidated basis, the ratio of (a) the sum of (i) Consolidated Funded Debt on such date plus (ii) the product of eight (8) multiplied by Consolidated Rent Expense for the four (4) consecutive quarters ending on such date to (b) Consolidated EBITDAR for the four (4) consecutive quarters ending on such date; provided that, the undrawn amount of any Letters of Credit issued to support workers’ compensation and other insurance obligations of the Credit Parties shall be excluded from such calculation of Consolidated Funded Debt.

“**Administrative Agent**” or “**Agent**” shall have the meaning set forth in the first paragraph of this Agreement and shall include any successors in such capacity.

“Administrative Questionnaire” shall mean an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” shall mean, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, the Person specified.

“Agreement” or “Credit Agreement” shall mean this Agreement, as amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with its terms.

“Alternate Base Rate” shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (c) the sum of (i) LIBOR (as determined pursuant to the definition of LIBOR), for an Interest Period of one (1) month commencing on such day plus (ii) 1.00%, in each instance as of such date of determination. For purposes hereof: “Prime Rate” shall mean, at any time, the rate of interest per annum publicly announced or otherwise identified from time to time by Wells Fargo at its principal office in San Francisco, California as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in the Prime Rate occurs. The parties hereto acknowledge that the rate announced publicly by Wells Fargo as its Prime Rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks; and “Federal Funds Effective Rate” shall mean, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published on the next succeeding Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it. If for any reason the Administrative Agent shall have determined (which determination shall be conclusive in the absence of manifest error) (A) that it is unable to ascertain the Federal Funds Effective Rate, for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms above or (B) that the Prime Rate or LIBOR no longer accurately reflects an accurate determination of the prevailing Prime Rate or LIBOR, the Administrative Agent may select a reasonably comparable index or source to use as the basis for the Alternate Base Rate, until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in any of the foregoing will become effective on the effective date of such change in the Federal Funds Rate, the Prime Rate or LIBOR for an Interest Period of one (1) month. Notwithstanding anything contained herein to the contrary, to the extent that the provisions of Section 2.13 shall be in effect in determining LIBOR pursuant to clause (c) hereof, the Alternate Base Rate shall be the greater of (i) the Prime Rate in effect on such day and (ii) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%.

“Alternate Base Rate Loans” shall mean Revolving Loans that bear interest at an interest rate based on the Alternate Base Rate.

“Anti-Terrorism Order” shall mean that certain Executive Order 13224 signed into law on September 23, 2001.

“Applicable Margin” shall mean, (a) prior to the Cash Collateral Release Date, for (i) Revolving Loans that are Alternate Base Rate Loans a rate per annum equal to 0.75%, (ii) Revolving Loans that are LIBOR Rate Loans shall be a rate per annum equal to 1.75%, (iii) the Letter of Credit Fee a rate per annum equal to 1.75% and (iv) the Commitment Fee a rate per annum equal to 0.125% and (b) following the Cash Collateral Release Date, the rate per annum set forth below opposite the applicable level then in effect (based on the Adjusted Leverage Ratio), it being understood that the Applicable Margin for (i) Revolving Loans that are Alternate Base Rate Loans shall be the percentage set forth under the column “Base Rate Margin”, (ii) Revolving Loans that are LIBOR Rate Loans shall be the percentage set forth under the column “LIBOR Margin & L/C Fee”, (iii) the Letter of Credit Fee shall be the percentage set forth under the column “LIBOR Margin & L/C Fee”, and (iv) the Commitment Fee shall be the percentage set forth under the column “Commitment Fee”:

Level	<u>Applicable Margin</u>			
	Adjusted Leverage Ratio	LIBOR Margin & L/C Fee	Base Rate Margin	Commitment Fee
I	Greater than 6.00 to 1.00	4.25%	3.25%	0.50%
II	Greater than 5.50 to 1.00 but less than or equal to 6.00 to 1.00	4.00%	3.00%	0.50%
III	Greater than 5.00 to 1.00 but less than or equal to 5.50 to 1.00	3.75%	2.75%	0.375%
IV	Less than or equal to 5.00 to 1.00	3.50%	2.50%	0.375%

The Applicable Margin shall, in each case, following the Cash Collateral Release Date, be determined and adjusted quarterly on the date five (5) Business Days after the date on which the Administrative Agent has received from the Borrower the quarterly financial information (in the case of the first three fiscal quarters of the Borrower’s fiscal year), the annual financial information (in the case of the Fourth Quarter) and the certifications required to be delivered to the Administrative Agent and the Lenders in accordance with the provisions of Sections 5.1(a), 5.1(b) and 5.2(b) (each an “Interest Determination Date”). Such Applicable Margin shall be effective from such Interest Determination Date until the next such Interest Determination Date. After the Cash Collateral Release Date, if the Credit Parties shall fail to provide the financial information or certifications in accordance with the provisions of Sections 5.1(b) and 5.2(b), the Applicable Margin shall, on the date five (5) Business Days after the date by which the Credit Parties were so required to provide such financial information or certifications to the Administrative Agent and the Lenders, be based on Level I until such time as such information or certifications or corrected information or corrected certificates are provided, whereupon the

Level shall be determined by the then current Adjusted Leverage Ratio. In the event that any financial statement or certification delivered pursuant to Sections 5.1 or 5.2 is shown to be inaccurate (regardless of whether this Agreement or the Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “Applicable Period”) than the Applicable Margin applied for such Applicable Period, the Borrower shall immediately (a) deliver to the Administrative Agent a corrected compliance certificate for such Applicable Period, (b) determine the Applicable Margin for such Applicable Period based upon the corrected compliance certificate, and (c) immediately pay to the Administrative Agent for the benefit of the Lenders the accrued additional interest and other fees owing as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly distributed by the Administrative Agent to the Lenders entitled thereto. It is acknowledged and agreed that nothing contained herein shall limit the rights of the Administrative Agent and the Lenders under the Credit Documents, including their rights under Sections 2.8 and Article VII.

“Applicable Percentage” shall mean, with respect to any Lender, the percentage of the total Revolving Commitments represented by such Lender’s Revolving Commitment. If the Revolving Commitments have terminated or expired, the Applicable Percentage shall be determined based on the Revolving Commitments most recently in effect, giving effect to any assignments.

“Approved Bank” shall have the meaning set forth in the definition of “Cash Equivalents.”

“Approved Fund” shall mean any Fund that is administered, managed or underwritten by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” shall mean WFS.

“ASC Section 840-40” shall mean Accounting Standards Codification Section 840-40 (Leases-Sale-Leaseback Transactions) issued by the Financial Accounting Standards Board, as now or hereafter in effect or any successor pronouncements.

“Asset Disposition” shall mean the disposition of any or all of the assets (including, without limitation, the Equity Interests of a Subsidiary or any ownership interest in a joint venture) of any Credit Party or any Subsidiary of a Credit Party whether by sale, lease, transfer or otherwise, in a single transaction or in a series of transactions. The term “Asset Disposition” shall not include (a) the sale, lease, transfer or other disposition of assets permitted by Subsections 6.4(a) (i) through (vi), or (b) any issuance by the Borrower of its Equity Interests.

“Assignment and Assumption” shall mean an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 9.6), and accepted by the Administrative Agent, in substantially the form of Exhibit 1.1(b) or any other form approved by the Administrative Agent.

“Authorized Officers” shall mean the Responsible Officers set forth on Schedule 3.29.

“Bank Product” shall mean any of the following products, services or facilities extended to any Credit Party or any Subsidiary of a Credit Party by any Bank Product Provider: (a) Cash Management Services; (b) products under any Hedging Agreement; and (c) commercial credit card, purchase card and merchant card services; provided, however, that for any of the foregoing to be included as “Credit Party Obligations” for purposes of a distribution under Section 2.11(b), the applicable Bank Product Provider must have previously provided a Bank Product Provider Notice to the Administrative Agent which shall provide the following information: (i) the existence of such Bank Product and (ii) the maximum dollar amount (if reasonably capable of being determined) of obligations arising thereunder (the “Bank Product Amount”). The Bank Product Amount may be changed from time to time upon written notice to the Administrative Agent by the Bank Product Provider. Any Bank Product established from and after the time that the Lenders have received written notice from the Company or the Administrative Agent that an Event of Default exists, until such Event of Default has been waived in accordance with Section 9.1, shall not be included as “Credit Party Obligations” for purposes of a distribution under Section 2.11(b).

“Bank Product Amount” shall have the meaning set forth in the definition of Bank Product.

“Bank Product Debt” shall mean the Indebtedness and other obligations of any Credit Party or Subsidiary relating to Bank Products.

“Bank Product Provider” shall mean any Person that provides Bank Products to a Credit Party or any Subsidiary of a Credit Party to the extent that (a) such Person is a Lender, an Affiliate of a Lender or any other Person that was a Lender (or an Affiliate of a Lender) at the time it entered into the Bank Product but has ceased to be a Lender (or whose Affiliate has ceased to be a Lender) under the Credit Agreement or (b) such Person is a Lender or an Affiliate of a Lender on the Closing Date and the Bank Product was entered into on or prior to the Closing Date (even if such Person ceases to be a Lender or such Person’s Affiliate ceased to be a Lender).

“Bank Product Provider Notice” shall mean a notice substantially in the form of Exhibit 1.1(g).

“Bankruptcy Code” shall mean the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

“Bankruptcy Event” shall mean any of the events described in Section 7.1(f).

“Borrower” shall have the meaning set forth in the first paragraph of this Agreement.

“Borrowing Date” shall mean, in respect of any Revolving Loan, the date such Revolving Loan is made.

“BK Leases” shall mean any leases or subleases with respect to a Restaurant where Burger King Corporation is the lessor or sublessor, respectively whether entered at, on, prior to, or after the Closing Date, as any of the same may from time to time be amended, modified, supplemented or restated.

“BK Units” shall mean the 278 Burger King Restaurants acquired pursuant to the Burger King Acquisition.

“Burger King Acquisition” shall mean the acquisition by the Borrower and Carrols LLC of 278 company-owned Burger King restaurants from Burger King Corporation.

“Burger King Corporation” shall mean Burger King Corporation, a Florida corporation.

“Burger King Rights” shall mean the collective reference to Burger King Corporation’s rights (if any) under each Franchise Agreement pursuant to which Burger King Corporation shall be entitled to: (a) prior written notice of any sale of all or substantially all of the Voting Stock of the Borrower or any other Credit Party; (b) a right of first refusal to purchase all or substantially all of the Voting Stock of the Borrower or any other Credit Party of all or substantially all of the assets of a Restaurant subject to a Franchise Agreement in connection with a sale thereof; (c) prior approval of any sale of all or substantially all of the Voting Stock of the Borrower or any other Credit Party; and (d) prior written consent to the sale, assignment, transfer, conveyance or give-away of substantially all of the assets of any Restaurant subject to a Franchise Agreement; in each case to the extent set forth in a legally binding Franchise Agreement.

“Business” shall have the meaning set forth in Section 3.10(b).

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which commercial banks in Boston, Massachusetts, San Francisco, California or New York, New York are authorized or required by law to close; provided, however, that when used in connection with a rate determination, borrowing or payment in respect of a LIBOR Rate Loan, the term “Business Day” shall also exclude any day on which banks in London, England are not open for dealings in Dollar deposits in the London interbank market.

“Capital Lease” shall mean any lease of property, real or personal, the obligations with respect to which are required to be capitalized on a balance sheet of the lessee in accordance with GAAP.

“Capital Lease Obligations” shall mean the capitalized lease obligations relating to a Capital Lease determined in accordance with GAAP.

“Cash Collateralize” shall mean (a) with respect to LOC Obligations, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent or the Issuing Lender (as applicable) and the Lenders, as collateral for LOC Obligations or obligations of Lenders to fund participations in respect thereof, cash or deposit account balances or, if the Issuing Lender shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (i) the

Administrative Agent and (ii) the Issuing Lender and (b) with respect to the requirements of Section 5.12(e), to cause the Credit Party Obligations to be fully secured by cash collateral in an amount equal to the Revolving Committed Amount held in the Revolver Cash Collateral Account and pursuant to the terms and conditions of the Security Documents or such other security documents as the Administrative Agent shall reasonably request. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Collateral Release Date" shall mean the date upon which the Borrower has achieved an Adjusted Leverage Ratio of less than 6.00 to 1.00 for two full consecutive fiscal quarters as evidenced by a certificate of an Authorized Officer substantially in the form of Exhibit 5.2(b) and delivered concurrently with the financial statements required to be delivered pursuant to Section 5.1(b) (such certificate to be delivered no earlier than the Fourth Quarter of 2012).

"Cash Equivalents" shall mean (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition ("Government Obligations"), (b) Dollar denominated time deposits, certificates of deposit, Eurodollar time deposits and Eurodollar certificates of deposit of (i) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or (ii) any bank whose short-term commercial paper rating at the time of the acquisition thereof is at least A-1 or the equivalent thereof from S&P or from Moody's is at least P-1 or the equivalent thereof from Moody's (any such bank being an "Approved Bank"), in each case with maturities of not more than 364 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within six months of the date of acquisition, (d) repurchase agreements with a term of not more than thirty (30) days with a bank or trust company (including a Lender) or a recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States of America, (e) obligations of any state of the United States or any political subdivision thereof for the payment of the principal and redemption price of and interest on which there shall have been irrevocably deposited Government Obligations maturing as to principal and interest at times and in amounts sufficient to provide such payment, (f) money market accounts subject to Rule 2a-7 of the Investment Company Act of 1940 ("Rule 2a-7") which consist primarily of cash and cash equivalents set forth in clauses (a) through (e) above and of which 95% shall at all times be comprised of First Tier Securities (as defined in Rule 2a-7) and any remaining amount shall at all times be comprised of Second Tier Securities (as defined in Rule 2a-7) and (g) shares of any so-called "money market fund"; provided that such fund is registered under the Investment Company Act of 1940, has net assets of at least \$500,000,000 and has an investment portfolio with an average maturity of 365 days or less.

"Cash Management Services" shall mean any services provided from time to time to any Credit Party or Subsidiary of a Credit Party in connection with operating, collections, payroll,

trust, or other depository or disbursement accounts, including automatic clearinghouse, controlled disbursement, depository, electronic funds transfer, information reporting, lockbox, stop payment, overdraft and/or wire transfer services and all other treasury and cash management services.

“Change in Law” shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” shall mean at any time the occurrence of any of the following events: (a) any “person” or “group” (as such terms are used in Section 13(d) and 14(d) of the Exchange Act), other than the Permitted Holders (individually or in any combination as a group), is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person shall be deemed to have “beneficial ownership” of all securities that such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, in excess of forty percent (40%) of the then outstanding Voting Stock of the Borrower; (b) the replacement of a majority of the Board of Directors of the Borrower over a two-year period from the directors who constituted the Board of Directors at the beginning of such period, and such replacement shall not have been approved by a vote of at least a majority of the Board of Directors of the Borrower then still in office who either were members of such Board of Directors at the beginning of such period or whose election as a member of such Board of Directors was previously so approved or (c) the occurrence of a “Change of Control” or any equivalent term or concept under the Second Lien Notes Indenture.

“Closing Date” shall mean the date of this Agreement.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” shall mean a collective reference to the collateral which is identified in, and at any time will be covered by, the Security Documents and any other property or assets of a Credit Party, whether tangible or intangible and whether real or personal, that may from time to time secure the Credit Party Obligations; provided that there shall be excluded from the Collateral (a) any account, instrument, chattel paper or other obligation or property of any kind due from, owed by, or belonging to, a Sanctioned Person or Sanctioned Entity, (b) any lease in which the lessee is a Sanctioned Person or Sanctioned Entity, (c) all Franchise Agreements that prohibit security interests thereon without consent of the franchisor, (d) all leased real property interests of the Credit Parties, (e) the Excluded Real Property and (f) any other property specifically excluded pursuant to the Security Documents.

“Commitment” shall mean the Revolving Commitments and the LOC Commitment, individually or collectively, as appropriate.

“Commitment Fee” shall have the meaning set forth in Section 2.5(a).

“Commitment Period” shall mean (a) with respect to Revolving Loans, the period from and including the Closing Date to but excluding the Maturity Date and (b) with respect to Letters of Credit, the period from and including the Closing Date to but excluding the date that is thirty (30) days prior to the Maturity Date.

“Committed Funded Exposure” shall mean, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans, LOC Obligations and Participation Interests at such time.

“Commonly Controlled Entity” shall mean an entity, whether or not incorporated, which is under common control with the Borrower within the meaning of Section 4001(b)(1) of ERISA or is part of a group which includes the Borrower and which is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Section 412 of the Code to the extent required by such Section, Section 414(m) or 414(o) of the Code.

“Consolidated” shall mean, when used with reference to financial statements or financial statement items of the Borrower and its Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

“Consolidated Capital Expenditures” shall mean, as of any date of determination for the four (4) consecutive fiscal quarter period ending on such date, all expenditures of the Credit Parties and their Subsidiaries on a Consolidated basis for such period that in accordance with GAAP would be classified as capital expenditures, including, without limitation, Capital Lease Obligations.

“Consolidated EBITDA” shall mean, as of any date of determination for the four (4) consecutive fiscal quarter period ending on such date, without duplication, (a) Consolidated Net Income for such period plus (b) the sum of the following to the extent deducted in calculating Consolidated Net Income for such period: (i) Consolidated Interest Expense for such period, (ii) tax expense (including, without limitation, any federal, state, local and foreign income and similar taxes) of the Credit Parties and their Subsidiaries for such period, (iii) depreciation and amortization expense of the Credit Parties and their Subsidiaries for such period, (iv) Other Designated Expenses, and (v) other non-cash charges (excluding reserves for future cash charges) of the Credit Parties and their Subsidiaries for such period (including, without limitation, non-cash expense related to stock option or other equity compensation plans or grants) minus (c) non-cash charges previously added back to Consolidated Net Income in determining Consolidated EBITDA to the extent such non-cash charges have become cash charges during such period minus (d) to the extent not deducted in the calculation of

Consolidated Net Income, all amounts paid by the Credit Parties pursuant to Sections 6.10(d) and (e) other than any payments or reimbursements for capital expenditures made for the benefit of the Credit Parties and their Subsidiaries.<sup>1</sup>

“Consolidated EBITDAR” shall mean, as of any date of determination for the four (4) consecutive fiscal quarter period ending on such date, without duplication, (a) Consolidated EBITDA plus (b) to the extent deducted in calculating Consolidated Net Income, Consolidated Rent Expense for such period.

“Consolidated Funded Debt” shall mean, as of any date of determination, Funded Debt of the Credit Parties and their Subsidiaries on a Consolidated basis.

“Consolidated Interest Expense” shall mean, as of any date of determination for the four (4) consecutive fiscal quarter period ending on such date, all interest expense (excluding amortization of debt discount and premium, but including the interest component under Capital Leases and synthetic leases, tax retention operating leases, off-balance sheet loans and similar off-balance sheet financing products) for such period of the Credit Parties and their Subsidiaries on a Consolidated basis.

“Consolidated Net Income” shall mean, as of any date of determination for the four (4) consecutive fiscal quarter period ending on such date, (i) the net income (excluding (a) extraordinary losses and gains, (b) gains from Dispositions not in the ordinary course of business, (c) gains from the early extinguishment of Indebtedness, (d) all non-cash income (other than amortization of deferred gains from Sale Leaseback transactions), (e) interest income, (f) tax credits, rebates and other benefits and (g) income received from joint venture investments to the extent not received in cash) of the Credit Parties and their Subsidiaries on a Consolidated basis for such period, all as determined in accordance with GAAP and (ii) to the extent not included in net income, any cash payments received by the Credit Parties and their Subsidiaries under the Spin-Off Documents for such period.

“Consolidated Rent Expense” shall mean, as of any date of determination for the four (4) consecutive fiscal quarter period ending on such date, all rent expense for such period of the Credit Parties and their Subsidiaries on a Consolidated basis; provided that, notwithstanding the foregoing, Consolidated Rent Expense shall exclude rent expense with respect to the Fiesta Leases to the extent actually paid by Fiesta or one of its Subsidiaries.

“Contractual Obligation” shall mean, as to any Person, any provision of any security issued by such Person or of any contract, agreement, instrument or undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

<sup>1</sup> Wells Fargo is fine with deleting to avoid disclosure but would still like certainty of the numbers. Perhaps we can have a side letter or include the numbers as part of the closing certificate.

“Copyright Licenses” shall mean any agreement, whether written or oral, providing for the grant by or to a Person of any right under any Copyright.

“Copyrights” shall mean all copyrights in all Works, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, or otherwise and all renewals thereof.

“Credit Documents” shall mean this Agreement, the Intercreditor Agreement, each of the Revolving Loan Notes, any Joinder Agreement, the Letters of Credit, LOC Documents and the Security Documents and all other agreements, documents, certificates and instruments delivered to the Administrative Agent or any Lender by any Credit Party in connection therewith (other than any agreement, document, certificate or instrument related to a Bank Product).

“Credit Party” shall mean any of the Borrower or the Guarantors.

“Credit Party Obligations” shall mean, without duplication, (a) the Obligations and (b) for purposes of the Guaranty, the Security Documents and all provisions under the other Credit Documents relating to the Collateral, the sharing thereof and/or payments from proceeds of the Collateral, all Bank Product Debt.

“Debt Issuance” shall mean the issuance of any Indebtedness by any Credit Party or any of its Subsidiaries (excluding any issuance by the Borrower of its Equity Interests or any Indebtedness of any Credit Party and its Subsidiaries permitted to be incurred pursuant to Sections 6.1 (a)-(l) hereof).

“Debtor Relief Laws” shall mean the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” shall mean any of the events specified in Section 7.1, whether or not any requirement for the giving of notice or the lapse of time, or both, or any other condition, has been satisfied.

“Default Rate” shall mean (a) when used with respect to the Obligations, other than Letter of Credit Fees, an interest rate equal to (i) for Alternate Base Rate Loans (A) the Alternate Base Rate plus (B) the Applicable Margin applicable to Alternate Base Rate Loans plus (C) 2.00% per annum and (ii) for LIBOR Rate Loans, (A) the LIBOR Rate plus (B) the Applicable Margin applicable to LIBOR Rate Loans plus (C) 2.00% per annum, (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Margin applicable to Letter of Credit Fees plus 2.00% per annum and (c) when used with respect to any other fee or amount due hereunder, a rate equal to the Applicable Margin applicable to Alternate Base Rate Loans plus 2.00% per annum.

“Defaulting Lender” shall mean, subject to Section 2.21(b) any Lender that, (a) has failed to (i) fund all or any portion of its Revolving Loans within two Business Days of the date such Revolving Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any Issuing Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Revolving Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.21(b)) upon delivery of written notice of such determination to the Borrower, each Issuing Lender and each Lender.

“Deposit Account Control Agreement” shall mean an agreement, among a Credit Party, a depository institution, and the Administrative Agent, which agreement is in a form acceptable to the Administrative Agent and which provides the Administrative Agent with “control” (as such term is used in Article 9 of the UCC) over the deposit account(s) described therein, as the same may be amended, modified, extended, restated, replaced, or supplemented from time to time.

“Disposition” shall have the meaning set forth in Section 6.4.

“Dollars” and “\$” shall mean dollars in lawful currency of the United States of America.

“Domestic Lending Office” shall mean, initially, the office of each Lender designated as such Lender’s Domestic Lending Office shown in such Lender’s Administrative Questionnaire; and thereafter, such other office of such Lender as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office of such Lender at which Alternate Base Rate Loans of such Lender are to be made.

“Domestic Subsidiary” shall mean any Subsidiary that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia, other than an Excluded Holding Subsidiary.

“Eligible Assignee” shall mean (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person (other than a natural person) approved by (i) the Administrative Agent (which approval shall not unreasonably be withheld or delayed in the case of an assignment pursuant to Section 2.19), (ii) in the case of any assignment of a Revolving Commitment, the Issuing Lender and (iii) unless an Event of Default has occurred and is continuing and so long as the primary syndication of the Revolving Loans has been completed as determined by Wells Fargo, the Borrower (each such approval not to be unreasonably withheld or delayed); provided that notwithstanding the foregoing, “Eligible Assignee” shall not include (A) any Credit Party or any of the Credit Party’s Affiliates or Subsidiaries or (B) any Person holding Subordinated Debt of the Credit Parties or any of such Person’s Affiliates or (C) any Defaulting Lender (or any of their Affiliates).

“Environmental Laws” shall mean any and all applicable foreign, federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirement of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health or the environment, as now or may at any time be in effect during the term of this Agreement.

“Equity Interests” shall mean (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general, preferred or limited), (d) in the case of a limited liability company, membership interests and (e) any other interest or participation that confers or could confer on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, without limitation, options, warrants and any other “equity security” as defined in Rule 3a11-1 of the Exchange Act.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Event of Default” shall mean any of the events specified in Section 7.1; provided, however, that any requirement for the giving of notice or the lapse of time, or both, or any other condition, has been satisfied.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Excluded Real Property” shall mean the owned real property set forth on Schedule 1.1(c) hereto.

“Excluded Taxes” shall mean any of the following Taxes imposed on or with respect to a Recipient, (a) Taxes imposed on or measured by the Recipient’s net income (however denominated), franchise Taxes imposed on the Recipient, and branch profits Taxes imposed on the Recipient, in each case, (i) by the jurisdiction (or any political subdivision thereof) under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) as the result of any other present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Revolving Loan or Credit Document), (b) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 2.19(b)), Taxes imposed on amounts payable to or for the account of such Lender pursuant to a law in effect on the date on which (i) such Lender becomes a party hereto or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.16, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.16(g) and (d) any Taxes imposed under FATCA (or any amended or successor version of FATCA that is substantively comparable and not materially more onerous to comply with).

“Existing Credit Agreement” shall mean that certain Credit Agreement, dated as of August 5, 2011, by and among Carrols LLC, certain domestic subsidiaries of Carrols LLC from time to time party thereto, the lenders party thereto and the Administrative Agent.

“Existing Letter of Credit” shall mean each of the letters of credit described by applicant, date of issuance, letter of credit number, amount, beneficiary and the date of expiry on Schedule 1.1(d) hereto.

“Extension of Credit” shall mean, as to any Lender, the making of a Revolving Loan by such Lender, any conversion of a Revolving Loan from one Type to another Type, any extension of any Revolving Loan or the issuance, extension or renewal of, or participation in, a Letter of Credit by such Lender.

“Extraordinary Receipt” shall mean any cash received by or paid to or for the account of any Person not in the ordinary course of business for Recovery Events.

“FATCA” shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement, and any current or future regulations or official interpretations thereof.

“Federal Funds Effective Rate” shall have the meaning set forth in the definition of “Alternate Base Rate”.

“Fee Letter” shall mean the letter agreement dated May 30, 2012, addressed to the Borrower from Wells Fargo and WFS, as amended, modified, extended, restated, replaced, or supplemented from time to time.

“Fiesta” shall mean Fiesta Restaurant Group, Inc., a Delaware corporation.

“Fiesta Leases” shall mean the Master Lease under which a Credit Party is the lessee with respect to the Pollo Tropical restaurants identified on Schedule 1.1(e).

“Fiesta Lease Guarantees” shall mean each of the guarantees by a Credit Party of all obligations of Fiesta or any of its Subsidiaries under the real property leases listed on Schedule 1.1(f) for certain Pollo Tropical and Taco Cabana restaurants.

“First Quarter” shall mean, with respect to any fiscal year of the Borrower, the thirteen (13) week period ending on the Sunday closest to March 31 of such fiscal year.

“Fixed Charge Coverage Ratio” shall mean, as of any date of determination, for the Credit Parties and their Subsidiaries on a Consolidated basis, the ratio of (a) Consolidated EBITDAR for the four (4) consecutive fiscal quarters ending on such date to (b) the sum of (i) Consolidated Interest Expense paid or payable in cash during the four (4) consecutive fiscal quarter period ending on such date, (ii) all cash Income Taxes paid during the four (4) consecutive fiscal quarter period ending on such date, (iii) Scheduled Funded Debt Payments made during the four (4) consecutive fiscal quarter period ending on such date (including the principal component of payments due on Capital Leases), and (iv) Consolidated Rent Expense during the four (4) consecutive fiscal quarter period ending on such date. Notwithstanding the foregoing, for purposes of calculating the Fixed Charge Coverage Ratio for the Second Quarter of 2012, the Third Quarter of 2012 and the Fourth Quarter of 2012, the components of the Fixed Charge Coverage Ratio attributable to (1) Consolidated Interest Expense and (2) Scheduled Funded Debt Payments ((1) and (2) collectively, the “Annualized Fixed Charges”) shall be annualized during such fiscal quarters such that (I) for the calculation of the Fixed Charge Coverage Ratio as of the end of the Second Quarter of 2012, Annualized Fixed Charges for the fiscal quarter then ending will be multiplied by four (4), (II) for the calculation of the Fixed Charge Coverage Ratio as of the end of the Third Quarter of 2012, Annualized Fixed Charges for the two fiscal quarter period then ending will be multiplied by two (2) and (III) for the calculation of the Fixed Charge Coverage Ratio as of the end of the Fourth Quarter of 2012, Annualized Fixed Charges for the three fiscal quarter period then ending will be multiplied by one and one-third (1 1/3). For purposes of the computations in clauses (I), (II) and (III) above and for purposes of calculating the Fixed Charge Coverage Ratio for the four quarter period ended as of the end of as of the end of the Second Quarter of 2013, the Consolidated Interest Expense and Scheduled Funded Debt Payments for the Second Quarter of 2012 shall be computed by measuring actual Consolidated Interest Expense and Scheduled Funded Debt Payments from the Closing Date through the end of the Second Quarter of 2012 (the “Stub Period”), dividing such amount by the number of days in the Stub Period and then multiplying such daily amount by ninety-two (92).

“Flood Hazard Property” shall mean any Mortgaged Property that is in an area designated by the Federal Emergency Management Agency as having special flood or mudslide hazards.

“Foreign Lender” shall mean (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, any Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“Foreign Subsidiary” shall mean any Subsidiary that is not a Domestic Subsidiary.

“Fourth Quarter” shall mean, with respect to any fiscal year of the Borrower, the thirteen (13) or fourteen (14) week period ending on the Sunday closest to December 31 of such fiscal year.

“Franchise Agreements” shall mean all of the franchise agreements to which Borrower or any of its Subsidiaries is a party as franchisee, as any of the same may from time to time be amended, modified, supplemented or restated.

“Fronting Exposure” shall mean, at any time there is a Defaulting Lender, such Defaulting Lender’s Applicable Percentage of the outstanding LOC Obligations with respect to Letters of Credit issued by the Issuing Lender other than LOC Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” shall mean any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“Funded Debt” shall mean, with respect to any Person, without duplication, all Indebtedness of such Person (other than Indebtedness set forth in clauses (e), (i), and (n) of such definition); provided, that (a) Funded Debt shall only include Indebtedness set forth in clause (j) of the definition thereof to the extent of unreimbursed drawings under such letters of credit or bankers’ acceptances facilities and (b) Funded Debt shall exclude all of the Subject Lease Financing Obligations.

“GAAP” shall mean generally accepted accounting principles in effect in the United States of America (or, in the case of Foreign Subsidiaries with significant operations outside the United States of America, generally accepted accounting principles in effect from time to time in their respective jurisdictions of organization or formation) applied on a consistent basis, subject, however, in the case of determination of compliance with the financial covenants set out in Section 5.9 to the provisions of Section 1.3.

“Government Acts” shall have the meaning set forth in Section 2.17.

“Government Obligations” shall have the meaning set forth in the definition of “Cash Equivalents.”

“Governmental Authority” shall mean the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantor” shall mean the Domestic Subsidiaries of the Borrower as are, or may from time to time become parties to this Agreement.

“Guaranty” shall mean the guaranty of the Guarantors set forth in Article X.

“Guaranty Obligations” shall mean, with respect to any Person, without duplication, any obligations of such Person (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness of any other Person in any manner, whether direct or indirect, and including, without limitation, any obligation, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting security therefor, (b) to advance or provide funds or other support for the payment or purchase of any such Indebtedness or to maintain working capital, solvency or other balance sheet condition of such other Person (including, without limitation, keep well agreements, maintenance agreements, comfort letters or similar agreements or arrangements) for the benefit of any holder of Indebtedness of such other Person, (c) to lease or purchase property, securities or services primarily for the purpose of assuring the holder of such Indebtedness, or (d) to otherwise assure or hold harmless the holder of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

“Hedging Agreements” shall mean, with respect to any Person, any agreement entered into to protect such Person against fluctuations in interest rates, or currency or raw materials values, including, without limitation, any interest rate swap, cap or collar agreement or similar arrangement between such Person and one or more counterparties, any foreign currency exchange agreement, currency protection agreements, commodity purchase or option agreements or other interest or exchange rate hedging agreements.

“Income Taxes” shall mean federal, state, local and foreign income and similar taxes (including franchise taxes, to the extent such franchise taxes are based on the income or revenues of the Credit Parties and their Subsidiaries).

“Indebtedness” shall mean, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, or upon which interest payments are customarily made, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (d) all obligations (including, without limitation, earnout obligations) of such Person incurred, issued or

assumed as the deferred purchase price of property or services purchased by such Person (other than trade debt and accrued expenses incurred in the ordinary course of business and due within six months of the incurrence thereof) which would appear as liabilities on a balance sheet of such Person, (e) all obligations of such Person under take-or-pay or similar arrangements or under commodities agreements, (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (g) all Guaranty Obligations of such Person with respect to Indebtedness of another Person, (h) the principal portion of all Capital Lease Obligations plus any accrued interest thereon, (i) all net obligations of such Person under Hedging Agreements, (j) the maximum amount of all letters of credit issued or bankers' acceptances facilities created for the account of such Person and, without duplication, all drafts drawn thereunder (to the extent unreimbursed), (k) all preferred Equity Interests issued by such Person and which by the terms thereof could be (at the request of the holders thereof or otherwise) subject to mandatory sinking fund payments, redemption or other acceleration on or prior to the Maturity Date, (l) the principal balance outstanding under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product plus any accrued interest thereon, (m) all obligations of any partnership or unincorporated joint venture in which such Person is a general partner or a joint venturer, (n) obligations of such Person under non-compete agreements to the extent such obligations are quantifiable contingent obligations of such Person under GAAP principles and (o) all ASC Section 840-40 lease financing obligations.

“Indemnified Taxes” shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnatee” shall have the meaning set forth in Section 9.5(b).

“Insolvency” shall mean, with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of such term as used in Section 4245 of ERISA.

“Intellectual Property” shall mean, collectively, all Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks and Trademark Licenses of the Credit Parties and their Subsidiaries, all goodwill associated therewith and all rights to sue for infringement thereof.

“Intercompany Debt” shall have the meaning set forth in Section 9.19.

“Intercreditor Agreement” shall mean that certain Intercreditor Agreement dated as of the date hereof by and among the Administrative Agent and BNY Mellon, in its capacity as trustee under the Second Lien Notes Indenture.

“Interest Determination Date” shall have the meaning specified in the definition of “Applicable Margin”.

“Interest Payment Date” shall mean (a) as to any Alternate Base Rate Loan, the last Business Day of each of the First Quarter, Second Quarter, Third Quarter and Fourth Quarter and

on the applicable Maturity Date, (b) as to any LIBOR Rate Loan having an Interest Period of three months or less, the last day of such Interest Period, (c) as to any LIBOR Rate Loan having an Interest Period longer than three months, (i) each three (3) month anniversary following the first day of such Interest Period and (ii) the last day of such Interest Period and (d) as to any Revolving Loan which is the subject of a mandatory prepayment required pursuant to Section 2.7(b), the date on which such mandatory prepayment is due.

“Interest Period” shall mean, with respect to any LIBOR Rate Loan,

(a) initially, the period commencing on the Borrowing Date or conversion date, as the case may be, with respect to such LIBOR Rate Loan and ending one, two, three, six, nine or twelve months thereafter, subject to availability to all applicable Lenders, as selected by the Borrower in the Notice of Borrowing or Notice of Conversion given with respect thereto; and

(b) thereafter, each period commencing on the last day of the immediately preceding Interest Period applicable to such LIBOR Rate Loan and ending one, two, three, six, nine or twelve months thereafter, subject to availability to all applicable Lenders, as selected by the Borrower by irrevocable notice to the Administrative Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto; provided that the foregoing provisions are subject to the following:

(i) if any Interest Period pertaining to a LIBOR Rate Loan would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period pertaining to a LIBOR Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month;

(iii) if the Borrower shall fail to give notice as provided above, the Borrower shall be deemed to have selected an Alternate Base Rate Loan to replace the affected LIBOR Rate Loan;

(iv) no Interest Period in respect of any Revolving Loan shall extend beyond the applicable Maturity Date; and

(v) no more than six (6) LIBOR Rate Loans may be in effect at any time. For purposes hereof, LIBOR Rate Loans with different Interest Periods shall be considered as separate LIBOR Rate Loans, even if they shall begin on the same date and have the same duration, although borrowings, extensions and conversions may, in accordance with the provisions hereof, be combined at the end of existing Interest Periods to constitute a new LIBOR Rate Loan with a single Interest Period.

“Investment” shall mean (a) the acquisition (whether for cash, property, services, assumption of Indebtedness, securities or otherwise) of Equity Interests, other ownership interests or other securities of any Person or bonds, notes, debentures or all or substantially all of the assets of any Person, (b) any deposit with, or advance, loan or other extension of credit to, any Person (other than deposits made in the ordinary course of business), (c) the construction or development of, or the entering into of a binding commitment to construct or develop, a new Restaurant, or (d) any other capital contribution to or investment in any Person, including, without limitation, any Guaranty Obligation (including any support for a letter of credit issued on behalf of such Person) incurred for the benefit of such Person.

“IRS” shall mean the United States Internal Revenue Service.

“Issuing Lender” shall mean Wells Fargo together with any successor.

“Issuing Lender Fees” shall have the meaning set forth in Section 2.5(c).

“Joinder Agreement” shall mean a Joinder Agreement in substantially the form of Exhibit 1.1(c), executed and delivered by an Additional Credit Party in accordance with the provisions of Section 5.10.

“Lender” shall mean any of the several banks and other financial institutions as are, or may from time to time become parties to this Agreement; provided that notwithstanding the foregoing, “Lender” shall not include any Credit Party or any of the Credit Party’s Affiliates or Subsidiaries.

“Lender Commitment Letter” shall mean, with respect to any Lender, the letter (or other correspondence) to such Lender from the Administrative Agent notifying such Lender of its LOC Commitment and Revolving Commitment Percentage.

“Letter of Credit” shall mean (a) any standby letter of credit issued by the Issuing Lender pursuant to the terms hereof, as such letter of credit may be amended, modified, restated, extended, renewed, increased, replaced or supplemented from time to time in accordance with the terms of this Agreement and (b) any Existing Letter of Credit, in each case as such letter of credit may be amended, modified, extended, renewed or replaced from time to time in accordance with the terms of this Agreement.

“Letter of Credit Facing Fee” shall have the meaning set forth in Section 2.5(c).

“Letter of Credit Fee” shall have the meaning set forth in Section 2.5(b).

“LIBOR” shall mean, for any LIBOR Rate Loan for any Interest Period therefor, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters Screen LIBOR01 Page (or any successor page) as the London interbank offered rate for deposits in Dollars

at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period. If for any reason such rate is not available, then “LIBOR” shall mean the rate per annum at which, as determined by the Administrative Agent in accordance with its customary practices, Dollars in an amount comparable to the Revolving Loans then requested are being offered to leading banks at approximately 11:00 A.M. London time, two (2) Business Days prior to the commencement of the applicable Interest Period for settlement in immediately available funds by leading banks in the London interbank market for a period equal to the Interest Period selected.

“LIBOR Lending Office” shall mean, initially, the office(s) of each Lender designated as such Lender’s LIBOR Lending Office in such Lender’s Administrative Questionnaire; and thereafter, such other office of such Lender as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office of such Lender at which the LIBOR Rate Loans of such Lender are to be made.

“LIBOR Rate” shall mean a LIBOR rate per annum (rounded upwards, if necessary, to the next higher 1/100th of 1%) determined by the Administrative Agent in accordance with the definition of “LIBOR”.

“LIBOR Rate Loan” shall mean Revolving Loans the rate of interest applicable to which is based on the LIBOR Rate.

“LIBOR Tranche” shall mean the collective reference to LIBOR Rate Loans whose Interest Periods begin and end on the same day.

“Lien” shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, (a) any conditional sale or other title retention agreement and any Capital Lease having substantially the same economic effect as any of the foregoing, (b) the filing of, or the agreement to give, any UCC financing statement and (c) the Burger King Rights.

“LOC Commitment” shall mean the commitment of the Issuing Lender to issue Letters of Credit and with respect to each Lender, the commitment of such Lender to purchase Participation Interests in the Letters of Credit up to such Lender’s Revolving Commitment Percentage of the LOC Committed Amount.

“LOC Committed Amount” shall have the meaning set forth in Section 2.3(a).

“LOC Documents” shall mean, with respect to each Letter of Credit, such Letter of Credit, any amendments thereto, any documents delivered in connection therewith, any application therefor, and any agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (a) the rights and obligations of the parties concerned or (b) any collateral for such obligations.

“LOC Obligations” shall mean, at any time, the sum of (a) the maximum amount which is, or at any time thereafter may become, available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referred to in such Letters of Credit plus (b) the aggregate amount of all drawings under Letters of Credit honored by the Issuing Lender but not theretofore reimbursed.

“Mandatory LOC Borrowing” shall have the meaning set forth in Section 2.3(e).

“Material Adverse Effect” shall mean a material adverse effect on (a) the business, operations, property, assets or condition (financial or otherwise) of the Credit Parties and their Subsidiaries taken as a whole, (b) the ability of the Borrower or any Guarantor to perform its obligations, when such obligations are required to be performed, under this Agreement, any of the Revolving Loan Notes or any other Credit Document or (c) the validity or enforceability of this Agreement, any of the Revolving Loan Notes or any of the other Credit Documents, the Administrative Agent’s Liens (for the benefit of the Secured Parties) on the Collateral or the priority of such Liens or the rights or remedies of the Administrative Agent or the Lenders hereunder or thereunder.

“Material Contract” shall mean (a) the Spin-Off Documents and (b) any contract or agreement of the Credit Parties or any of their Subsidiaries as to which the breach, nonperformance, cancellation or failure to renew by any party thereto, could reasonably be expected to have a Material Adverse Effect. The parties acknowledge that no individual Restaurant real property lease or individual Franchise Agreement is a Material Contract for purposes of this Agreement; provided, however, depending on the materiality of the obligations subject thereto, an individual Franchise Agreement may be deemed to be a Material Contract to the extent a default thereunder shall result in a cross default under one or more other Franchise Agreements.

“Materials of Environmental Concern” shall mean any gasoline or petroleum (including crude oil or any extraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, perchlorate, polychlorinated biphenyls and urea-formaldehyde insulation.

“Maturity Date” shall mean the date that is the earlier of (i) five years following the Closing Date and (ii) the date that is six months prior to the maturity date of the Second Lien Notes; provided, however, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Mortgage Instrument” shall mean any mortgage, deed of trust or deed to secure debt executed by a Credit Party in favor of the Administrative Agent, for the benefit of the Secured Parties, as the same may be amended, modified, extended, restated, replaced, or supplemented from time to time.

“Mortgaged Property” shall mean any owned real property of a Credit Party listed on Schedule 3.16(f)(i) and any other owned real property of a Credit Party that is or will become encumbered by a Mortgage Instrument in favor of the Administrative Agent in accordance with the terms of this Agreement. Mortgaged Properties shall not include any Excluded Real Property.

“Multiemployer Plan” shall mean a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Cash Proceeds” shall mean the aggregate cash proceeds received by any Credit Party or any Subsidiary in respect of any Asset Disposition, Debt Issuance or Extraordinary Receipts, net of (a) reasonable direct costs and expenses (including, without limitation, legal, accounting and investment banking fees, and sales commissions) associated therewith and paid to Persons who are not Credit Parties or their Affiliates, (b) amounts held in escrow to be applied as part of the purchase price of any Asset Disposition or the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, (c) the amount of such proceeds required to be used to permanently repay any Indebtedness (other than the Obligations) and (d) taxes paid or reasonably estimated to be payable as a result thereof; it being understood that “Net Cash Proceeds” shall include, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received by any Credit Party or any Subsidiary in any Asset Disposition, Debt Issuance or Extraordinary Receipt and any cash released from escrow as part of the purchase price in connection with any Asset Disposition.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all affected Lenders in accordance with the terms of Section 9.1 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” shall mean, at any time, each Lender that is not a Defaulting Lender at such time.

“Notice of Borrowing” shall mean a request for a Revolving Loan borrowing pursuant to Section 2.1(b)(i). A Form of Notice of Borrowing is attached as Exhibit 1.1(d).

“Notice of Conversion/Extension” shall mean the written notice of conversion of a LIBOR Rate Loan to an Alternate Base Rate Loan or an Alternate Base Rate Loan to a LIBOR Rate Loan, or extension of a LIBOR Rate Loan, in each case substantially in the form of Exhibit 1.1(e).

“Obligations” shall mean, collectively, all of the obligations, Indebtedness and liabilities of the Credit Parties to the Lenders (including the Issuing Lender) and the Administrative Agent, whenever arising, under this Agreement, the Revolving Loan Notes or any of the other Credit Documents, including principal, interest, fees, costs, charges, expenses, professional fees, reimbursements, all sums chargeable to the Credit Parties or for which any Credit Party is liable as an indemnitor and whether or not evidenced by a note or other instrument and indemnification obligations and other amounts (including, but not limited to, any interest accruing after the occurrence of a filing of a petition of bankruptcy under the Bankruptcy Code with respect to any Credit Party, regardless of whether such interest is an allowed claim under the Bankruptcy Code).

“OFAC” shall mean the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Offering Memorandum” shall mean that certain Offering Memorandum by the Borrower dated as of May 24, 2012.

“Operating Lease” shall mean, as applied to any Person, any lease (including, without limitation, leases which may be terminated by the lessee at any time) of any property (whether real, personal or mixed) which is not a Capital Lease or a lease in connection with an ASC 840-40 lease financing obligation other than any such lease in which that Person is the lessor.

“Other Designated Expenses” shall mean, for any period, (a) consolidated impairment charges recorded in connection with the application of Financial Accounting Standard No. 142 “Goodwill and Other Intangibles” and Financial Accounting Standard No. 144 “Accounting for the Impairment or Disposal of Long Lived Assets,” or any successor pronouncements, (b) amortization associated with the excess of purchase price over the value allocated to tangible property or assets acquired by the Borrower or its consolidated Subsidiaries, (c) any non-recurring cash fees, charges or other expenses made or incurred in connection with the credit facilities under this Agreement and the Existing Credit Agreement and the issuance of the Second Lien Notes, (d) cash fees, charges or other expenses made or incurred in connection with the Spin-Off and (e) cash fees, charges or other expenses made or incurred in connection with the Burger King Acquisition.

“Other Taxes” shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such taxes that are imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“Participant” has the meaning assigned to such term in clause (d) of Section 9.6.

“Participation Interest” shall mean a participation interest purchased by a Lender in LOC Obligations as provided in Section 2.3(c).

“Participant Register” has the meaning specified in clause (d) of Section 9.6.

“Patent Licenses” shall mean any agreement, whether written or oral, providing for the grant by or to a Person of any right to manufacture, use or sell any invention covered by a Patent.

“Patents” shall mean (a) all letters patent of the United States or any other country, now existing or hereafter arising, and all improvement patents, reissues, reexaminations, patents of additions, renewals and extensions thereof and (b) all applications for letters patent of the United States or any other country and all provisionals, divisions, continuations and continuations-in-part and substitutes thereof.

“Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“Payment Event of Default” shall mean an Event of Default specified in Section 7.1(a).

“PBGC” shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA.

“Permitted Acquisition” shall mean an acquisition or any series of related acquisitions by a Credit Party of (a) all or substantially all of the assets or a majority of the outstanding Voting Stock or economic interests of a Person that is incorporated, formed or organized in the United States, (b) a Person that is incorporated, formed or organized in the United States by a merger, amalgamation or consolidation or any other combination with such Person, (c) any division, line of business or other business unit of a Person that is incorporated, formed or organized in the United States (such Person or such division, line of business or other business unit of such Person shall be referred to herein as the “Target”), in each case that is a type of business (or assets used in a type of business) permitted to be engaged in by the Credit Parties and their Subsidiaries pursuant to Section 6.3 or (d) one or more Restaurants not part of a transaction described in clause (a), (b) or (c) above, in each case so long as:

(i) no Default or Event of Default shall then exist or would exist after giving effect thereto;

(ii) after the Cash Collateral Release Date, the Credit Parties shall demonstrate to the reasonable satisfaction of the Administrative Agent that, after giving effect to the acquisition on a Pro Forma Basis, (A) the Credit Parties are in compliance with each of the financial covenants set forth in Section 5.9 and (B) for acquisitions consummated at any time the Adjusted Leverage Ratio covenant level set forth in Section 5.9(a) is greater than 5.50 to 1.00, the Adjusted Leverage Ratio shall be 0.25 to 1.00 less than the then applicable level set forth in Section 5.9;

(iii) the Administrative Agent, on behalf of the Secured Parties, shall have received (or shall receive in connection with the closing of such acquisition) a first priority perfected security interest in all property (including, without limitation, Equity Interests) acquired with respect to the Target in accordance with the terms of Sections 5.10 and 5.12 and the Target, if a Person, shall have executed a Joinder Agreement in accordance with the terms of Section 5.10;

(iv) in connection with any Permitted Acquisition with a purchase price in excess of \$5,000,000, the Administrative Agent and the Lenders shall have

received (A) a description of the material terms of such acquisition, (B) with respect to Permitted Acquisitions referred to in clause (a) above, audited financial statements (or, if unavailable, unaudited financial statements prepared by management of the Target) of the Target for the periods available to the Borrower (which shall not exceed its two most recent fiscal years) and for any fiscal quarters ended within the fiscal year to date (which quarters financial statements shall be unaudited), (C) with respect to Permitted Acquisitions referred to in clauses (b) or (c) above, financial statements of the Target that are made available to the Borrower (or such other financial information reasonably acceptable to the Administrative Agent) for its most recent fiscal year, (D) with respect to Permitted Acquisitions referred to in clause (d) above, profit and loss statements with respect to each Restaurant acquired and (E) not less than five (5) Business Days prior to the consummation of any such Permitted Acquisition, a certificate substantially in the form of Exhibit 1.1(f), executed by an Authorized Officer of the Borrower certifying that such Permitted Acquisition complies with the requirements of this Agreement; and

(v) such acquisition shall not be a “hostile” acquisition and shall have been approved by the Board of Directors (or equivalent) and/or shareholders (or equivalent) of the applicable Credit Party and the Target.

“Permitted Construction Transaction” shall have the meaning set forth in Section 6.5(h).

“Permitted Holders” shall mean (i) Jefferies Capital Partners IV LP, Jefferies Employee Partners IV LLC, JCP Partners IV LLC and/or any of their respective Affiliates and (ii) Daniel T. Accordino, Paul R. Flanders, Timothy J. LaLonde and William E. Myers and any member of executive management (vice president or more senior) of any of the Credit Parties.

“Permitted Investments” shall have the meaning set forth in Section 6.5.

“Permitted Liens” shall have the meaning set forth in Section 6.2.

“Person” shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” shall mean, as of any date of determination, any employee benefit plan which is covered by Title IV of ERISA and in respect of which any Credit Party or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Prime Rate” shall have the meaning set forth in the definition of Alternate Base Rate.

“Pro Forma Basis” shall mean, with respect to any transaction, that such transaction shall be deemed to have occurred as of the first day of the four-quarter period (or twelve month period, as applicable) ending as of the most recent quarter end (or month end, as applicable) preceding the date of such transaction for which financial statement information is available.

“Properties” shall have the meaning set forth in Section 3.10(a).

“Recipient” shall mean (a) the Administrative Agent, (b) any Lender and (c) any Issuing Lender, as applicable.

“Recovery Event” shall mean the receipt by any Credit Party or its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of their respective property or assets.

“Register” shall have the meaning set forth in Section 9.6(c).

“Reimbursement Obligation” shall mean the obligation of the Borrower to reimburse the Issuing Lender pursuant to Section 2.3(d) for amounts drawn under Letters of Credit.

“Related Parties” shall mean, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“Reorganization” shall mean, with respect to any Multiemployer Plan, the condition that such Plan is in reorganization within the meaning of such term as used in Section 4241 of ERISA.

“Reportable Event” shall mean any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty-day notice period is waived under PBGC Reg. §4043.

“Required Lenders” shall mean, as of any date of determination, (a) if there are two or fewer Lenders, Lenders holding 100% of (i) the outstanding Revolving Commitments or (ii) if the Revolving Commitments have been terminated, the outstanding Revolving Loans and Participation Interests and (b) if there are more than two Lenders, Lenders holding at least a majority of (i) the outstanding Revolving Commitments or (ii) if the Revolving Commitments have been terminated, the outstanding Revolving Loans and Participation Interests; provided, however, that if any Lender shall be a Defaulting Lender at such time, then there shall be excluded from the determination of Required Lenders, Obligations (including Participation Interests) owing to such Defaulting Lender and such Defaulting Lender’s Commitments.

“Requirement of Law” shall mean, as to any Person, (a) the articles or certificate of incorporation, by-laws or other organizational or governing documents of such Person, and (b) all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, executive orders, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority (in each case whether or not having the force of law); in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer” shall mean, for any Credit Party, the chief executive officer, the president, chief financial officer, general counsel, secretary, treasurer or any vice president of such Credit Party and any additional responsible officer that is designated as such to the Administrative Agent.

“Restaurant” means any restaurant owned or leased by the Borrower or any of its Subsidiaries.

“Restricted Payment” shall mean (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of any Credit Party or any of its Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of any Credit Party or any of its Subsidiaries, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Credit Party or any of its Subsidiaries, now or hereafter outstanding, (d) any payment or prepayment of principal of, premium, if any, or interest on, redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Subordinated Debt of any Credit Party or any of its Subsidiaries, (e) the payment by any Credit Party or any of its Subsidiaries of any management, advisory or consulting fee to any Person that is an Affiliate of a Credit Party, (f) the payment by any Credit Party or any of its Subsidiaries of any amounts pursuant to the Spin-Off Documents, or (g) any redemption, repurchase or clawback of the Second Lien Notes.

“Revolver Cash Collateral Account” shall mean, a money market account or similar investment account reasonably acceptable to the Administrative Agent and the Borrower held at Wells Fargo for the purpose of fully Cash Collateralizing the Obligations.

“Revolving Availability” shall mean the amount by which the Revolving Committed Amount exceeds the aggregate Revolving Credit Exposure.

“Revolving Commitment” shall mean, with respect to each Lender, the commitment of such Lender to make Revolving Loans in an aggregate principal amount at any time outstanding up to an amount equal to such Lender’s Revolving Commitment Percentage of the Revolving Committed Amount.

“Revolving Commitment Percentage” shall mean, for each Lender, the percentage identified as its Revolving Commitment Percentage in its Lender Commitment Letter or in the Assignment and Assumption pursuant to which such Lender became a Lender hereunder, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 9.6(b).

“Revolving Committed Amount” shall have the meaning set forth in Section 2.1(a).

“Revolving Credit Exposure” shall mean, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender’s participation in LOC Obligations at such time.

“Revolving Facility” shall have the meaning set forth in Section 2.1(a).

“Revolving Loan” shall have the meaning set forth in Section 2.1.

“Revolving Loan Note” or “Revolving Loan Notes” shall mean the promissory notes of the Borrower provided pursuant to Section 2.1(e) in favor of any of the Lenders evidencing the Revolving Loan provided by any such Lender pursuant to Section 2.1(a), individually or collectively, as appropriate, as such promissory notes may be amended, modified, extended, restated, replaced, or supplemented from time to time.

“S&P” shall mean Standard & Poor’s Ratings Services, a division of The McGraw Hill Companies, Inc.

“Sale Leaseback” shall have the meaning set forth in Section 6.12.

“Sanctioned Entity” shall mean (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a person or entity resident in or determined to be resident in a country, that is subject to a country sanctions program administered and enforced by OFAC.

“Sanctioned Person” shall mean a person named on the list of Specially Designated Nationals maintained by OFAC.

“Sarbanes-Oxley” shall mean the Sarbanes-Oxley Act of 2002.

“Scheduled Funded Debt Payments” shall mean, as of any date of determination for the four (4) consecutive fiscal quarter period ending on such date, the sum of all regularly scheduled payments of principal on Funded Debt of the Credit Parties and their Subsidiaries on a Consolidated basis for the applicable period ending on the date of determination (including the principal component of payments due on Capital Leases during the applicable period ending on the date of determination) to the extent actually paid in cash.

“SEC” shall mean the Securities and Exchange Commission or any successor Governmental Authority.

“Second Lien Notes” means those certain notes (together with any Additional Notes (as defined in the Second Lien Notes Indenture)) issued to the holders thereof from time to time.

“Second Lien Notes Indenture” shall mean that certain Note Indenture, dated as of the date hereof, by and among the Borrower, the guarantors from time to time party thereto and BNY Mellon as trustee and as collateral agent.

“Second Quarter” shall mean, with respect to any fiscal year of the Borrower, the thirteen (13) week period ending on the Sunday closest to June 30 of such fiscal year.

“Secured Parties” shall mean the Administrative Agent, the Lenders and the Bank Product Providers.

“Securities Account Control Agreement” shall mean an agreement, among a Credit Party, a securities intermediary, and the Administrative Agent, which agreement is in a form acceptable to the Administrative Agent and which provides the Administrative Agent with “control” (as such term is used in Articles 8 and 9 of the UCC) over the securities account(s) described therein, as the same may be as amended, modified, extended, restated, replaced, or supplemented from time to time.

“Securities Act” shall mean the Securities Act of 1933, together with any amendment thereto or replacement thereof and any rules or regulations promulgated thereunder.

“Securities Laws” shall mean the Securities Act, the Exchange Act, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

“Security Agreement” shall mean the First Lien Security Agreement dated as of the Closing Date among the Credit Parties and the Administrative Agent, as amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with its terms.

“Security Documents” shall mean the Security Agreement, the Intercreditor Agreement, any Deposit Account Control Agreement, any Securities Account Control Agreement, the Mortgage Instruments and all other agreements, documents and instruments relating to, arising out of, or in any way connected with any of the foregoing documents or granting to the Administrative Agent, for the benefit of the Secured Parties, Liens or security interests to secure, inter alia, the Credit Party Obligations whether now or hereafter executed and/or filed, each as may be amended from time to time in accordance with the terms hereof, executed and delivered in connection with the granting, attachment and perfection of the Administrative Agent’s security interests and liens arising thereunder, including, without limitation, UCC financing statements.

“Single Employer Plan” shall mean any Plan that is not a Multiemployer Plan.

“Spin-Off” shall mean Carrols Corporation’s distribution of its ownership in Fiesta to the Borrower and the Borrower’s distribution of such ownership interests to the holders of the Equity Interests of the Borrower which was completed on the Spin-Off Date.

“Spin-Off Date” shall mean May 7, 2012.

“Spin-Off Documents” shall mean the Transition Services Agreement, the Separation and Distribution Agreement, the Tax Matters Agreement and the Employee Matters Agreement (and any ancillary agreements executed in connection therewith) entered into in connection with the Spin-Off, as set forth in the Borrower’s Current Report on Form 8-K filing dated as of April 26, 2012, with any changes, additions, modifications and amendments that vary from such description which would not be materially more disadvantageous to the Lenders.

“Spin-Off Parties” shall mean Fiesta, Pollo Operations, Inc., Pollo Franchise, Inc. and Taco Cabana, Inc and its Subsidiaries.

“Subject Lease Financing Obligations” shall mean the ASC 840 40 lease financing obligations set forth on Schedule 1.1(g).

“Subordinated Debt” shall mean any Indebtedness incurred by any Credit Party which by its terms is specifically subordinated in right of payment to the prior payment of the Credit Party Obligations and contains subordination and other terms acceptable to the Administrative Agent.

“Subsidiary” shall mean, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, limited liability company, partnership or other entity are at the time owned, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Target” shall have the meaning set forth in the definition of “Permitted Acquisition”.

“Taxes” shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Third Quarter” shall mean, with respect to any fiscal year of the Borrower, the thirteen (13) week period ending on the Sunday closest to September 30 of such fiscal year.

“Total Credit Exposure” means, as to any Lender at any time, the unused Commitments and Revolving Credit Exposure of such Lender at such time.

“Trademark License” shall mean any agreement, whether written or oral, providing for the grant by or to a Person of any right to use any Trademark.

“Trademarks” shall mean (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, elements of package or trade dress of goods or services, logos and other source or business identifiers, together with the goodwill associated therewith, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof and (b) all renewals thereof.

“Tranche” shall mean the collective reference to (a) LIBOR Rate Loans whose Interest Periods begin and end on the same day and (b) Alternate Base Rate Loans made on the same day.

“Transactions” shall mean the closing of this Agreement and the other Credit Documents and the other transactions contemplated hereby and pursuant to the other Credit Documents (including, without limitation, the initial borrowings under the Credit Documents and the payment of fees and expenses in connection with all of the foregoing).

“Transfer Effective Date” shall have the meaning set forth in each Assignment and Assumption.

“Type” shall mean, as to any Revolving Loan, its nature as an Alternate Base Rate Loan or LIBOR Rate Loan, as the case may be.

“UCC” shall mean the Uniform Commercial Code from time to time in effect in any applicable jurisdiction.

“U.S. Borrower” shall mean any Borrower that is a U.S. Person.

“U.S. Person” shall mean any Person that is a “United States Person” as defined in section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in paragraph (g) of Section 2.16.

“Voting Stock” shall mean, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote may be or have been suspended by the happening of such a contingency.

“Wells Fargo” shall mean Wells Fargo Bank, National Association, a national banking association, together with its successors and/or assigns.

“WFS” shall mean Wells Fargo Securities, LLC, together with its successors and assigns.

“Withholding Agent” means any Credit Party and the Administrative Agent.

“Works” shall mean all works which are subject to copyright protection pursuant to Title 17 of the United States Code.

## **Section 1.2 Other Definitional Provisions.**

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented, amended and restated or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (g) all terms defined in this Agreement shall have the defined meanings when used in any other Credit Document or any certificate or other document made or delivered pursuant hereto unless the context otherwise requires or such term is otherwise defined in any such other Credit Document or any certificate or other document.

## **Section 1.3 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the most recently delivered audited Consolidated financial statements of the Borrower, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) **Financial Covenant Calculations.** The parties hereto acknowledge and agree that, for purposes of all calculations made in determining compliance for any applicable period with the covenants set forth in Section 5.9 and for purposes of determining the Applicable Margin, (i) after consummation of any Permitted Acquisition, (A) Consolidated EBITDAR shall be calculated after giving effect thereto on a Pro Forma Basis (subject to adjustments mutually and reasonably acceptable to the Borrower and the Administrative Agent), (B) Consolidated Interest Expense shall be calculated after giving effect thereto (including the effect of any related incurrence of Indebtedness) on a Pro Forma Basis and (C) Consolidated Rent Expense shall be calculated after giving effect thereto on a Pro Forma Basis (subject to adjustments mutually and reasonably acceptable to the Borrower and the Administrative Agent), (ii) after the consummation of any Permitted Construction Transaction, (A) Consolidated EBITDAR shall be calculated after giving effect thereto on a Pro Forma Basis (subject to adjustments mutually and reasonably acceptable to the Borrower and the Administrative Agent), (B) Consolidated Interest Expense shall be calculated after giving effect thereto (including the effect of any related incurrence of Indebtedness) on a Pro Forma Basis and (C) Consolidated Rent Expense shall be calculated after giving effect thereto on a Pro Forma Basis (subject to adjustments mutually and reasonably acceptable to the Borrower and the Administrative Agent), (iii) after any Disposition permitted by Section 6.4(a)(vii) and (viii) in an amount in excess of \$2,500,000, (A) Consolidated EBITDAR shall be calculated after giving effect thereto on a Pro Forma Basis (to the extent the property or assets subject to such Disposition were owned during the applicable period of calculation) (subject to adjustments mutually and reasonably acceptable to the Borrower and the Administrative Agent), (B) Consolidated Interest Expense shall be calculated after giving effect thereto (including the effect of any related incurrence of Indebtedness) on a Pro Forma Basis and (C) Consolidated Rent Expense shall be calculated after giving effect thereto on a Pro Forma Basis (subject to adjustments mutually acceptable to the Borrower and the Administrative Agent) and (iv) after consummation of the Spin-Off and the Burger King Acquisition, (A) Consolidated EBITDAR shall be calculated after giving effect thereto on a Pro Forma Basis (subject to adjustments mutually and reasonably acceptable to the Borrower and the Administrative Agent), (B) Consolidated Interest Expense shall be calculated after giving effect thereto (including the effect of any related incurrence of Indebtedness) on a Pro Forma Basis and (C) Consolidated Rent Expense shall be calculated after giving effect thereto on a Pro Forma Basis (subject to adjustments mutually acceptable to the Borrower and the Administrative Agent).

#### **Section 1.4 Time References.**

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

#### **Section 1.5 Execution of Documents.**

Unless otherwise specified, all Credit Documents and all other certificates executed in connection therewith must be signed by an Authorized Officer.

## THE LOANS; AMOUNT AND TERMS

**Section 2.1 Revolving Loans.**

(a) Revolving Commitment. During the Commitment Period, subject to the terms and conditions hereof, each Lender severally, but not jointly, agrees to make revolving credit loans in Dollars ("Revolving Loans") to the Borrower from time to time in an aggregate principal amount of up to TWENTY MILLION DOLLARS (\$20,000,000) (as increased from time to time as provided in Section 2.22 and as such aggregate maximum amount may be reduced from time to time as provided in Section 2.6, the "Revolving Committed Amount") for the purposes hereinafter set forth (such facility, the "Revolving Facility"); provided, however, that (i) no Revolving Loans shall be made on the Closing Date, (ii) with regard to each Lender individually, the sum of such Lender's Revolving Commitment Percentage of the aggregate principal amount of outstanding Revolving Loans plus such Lender's Revolving Commitment Percentage of outstanding LOC Obligations shall not exceed such Lender's Revolving Commitment and (iii) with regard to the Lenders collectively, the sum of the aggregate principal amount of outstanding Revolving Loans plus outstanding LOC Obligations shall not exceed the Revolving Committed Amount then in effect. Revolving Loans may consist of Alternate Base Rate Loans or LIBOR Rate Loans, or a combination thereof, as the Borrower may request, and may be repaid and reborrowed in accordance with the provisions hereof; provided, however, the Revolving Loans made on any of the three (3) Business Days following the Closing Date, may only consist of Alternate Base Rate Loans unless the Borrower delivers a funding indemnity letter, substantially in the form of Exhibit 2.1(a), reasonably acceptable to the Administrative Agent not less than three (3) Business Days prior to the requested borrowing date. LIBOR Rate Loans shall be made by each Lender at its LIBOR Lending Office and Alternate Base Rate Loans at its Domestic Lending Office.

(b) Revolving Loan Borrowings.

(i) Notice of Borrowing. The Borrower shall request a Revolving Loan borrowing by delivering a written Notice of Borrowing (or telephone notice promptly confirmed in writing by delivery of a written Notice of Borrowing, which delivery may be by fax) to the Administrative Agent not later than 11:00 A.M. on the date of the requested borrowing in the case of Alternate Base Rate Loans, and on the third Business Day prior to the date of the requested borrowing in the case of LIBOR Rate Loans. Each such Notice of Borrowing shall be irrevocable and shall specify (A) that a Revolving Loan is requested, (B) the date of the requested borrowing (which shall be a Business Day), (C) the aggregate principal amount to be borrowed and (D) whether the borrowing shall be comprised of Alternate Base Rate Loans, LIBOR Rate Loans or a combination thereof, and if LIBOR Rate Loans are requested, the Interest Period(s) therefor. If

the Borrower shall fail to specify in any such Notice of Borrowing (1) an applicable Interest Period in the case of a LIBOR Rate Loan, then such notice shall be deemed to be a request for an Interest Period of one month, or (2) the Type of Revolving Loan requested, then such notice shall be deemed to be a request for an Alternate Base Rate Loan hereunder. The Administrative Agent shall give notice to each Lender promptly upon receipt of each Notice of Borrowing, the contents thereof and each such Lender's share thereof.

(ii) Minimum Amounts. Each Revolving Loan that is made as an Alternate Base Rate Loan shall be in a minimum aggregate amount of \$500,000 and in integral multiples of \$250,000 in excess thereof (or the remaining amount of the Revolving Committed Amount, if less). Each Revolving Loan that is made as a LIBOR Rate Loan shall be in a minimum aggregate amount of \$500,000 and in integral multiples of \$250,000 in excess thereof (or the remaining amount of the Revolving Committed Amount, if less).

(iii) Advances. Each Lender will make its Revolving Commitment Percentage of each Revolving Loan borrowing available to the Administrative Agent for the account of the Borrower at the office of the Administrative Agent specified in Section 9.2, or at such other office as the Administrative Agent may designate in writing, by 1:00 P.M. on the date specified in the applicable Notice of Borrowing, in Dollars and in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent by crediting the account of the Borrower on the books of such office (or such other account that the Borrower may designate in writing to the Administrative Agent) with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent.

(c) Repayment. Subject to the terms of this Agreement, Revolving Loans may be borrowed, repaid and reborrowed during the Commitment Period, subject to Section 2.7(a). The principal amount of all Revolving Loans shall be due and payable in full on the Maturity Date, unless accelerated sooner pursuant to Section 7.2.

(d) Interest. Subject to the provisions of Section 2.8, Revolving Loans shall bear interest as follows:

(i) Alternate Base Rate Loans. During such periods as any Revolving Loans shall be comprised of Alternate Base Rate Loans, each such Alternate Base Rate Loan shall bear interest at a per annum rate equal to the sum of the Alternate Base Rate plus the Applicable Margin; and

(ii) LIBOR Rate Loans. During such periods as Revolving Loans shall be comprised of LIBOR Rate Loans, each such LIBOR Rate Loan shall bear interest at a per annum rate equal to the sum of the LIBOR Rate plus the Applicable Margin.

Interest on Revolving Loans shall be payable in arrears on each Interest Payment Date.

(e) Revolving Loan Notes; Covenant to Pay. The Borrower's obligation to pay each Lender shall be evidenced by this Agreement and, upon such Lender's request, by a duly executed promissory note of the Borrower to such Lender in substantially the form of Exhibit 2.1(e). The Borrower covenants and agrees to pay the Revolving Loans in accordance with the terms of this Agreement.

**Section 2.2 [Reserved].**

**Section 2.3 Letter of Credit Subfacility.**

(a) Issuance. Subject to the terms and conditions hereof and of the LOC Documents, if any, and any other terms and conditions which the Issuing Lender may reasonably require, during the Commitment Period the Issuing Lender shall issue, and the Lenders shall participate in, standby Letters of Credit for the account of the Borrower from time to time upon request in a form acceptable to the Issuing Lender; provided, however, that (i) the aggregate amount of LOC Obligations shall not at any time exceed FIFTEEN MILLION DOLLARS (\$15,000,000) (the "LOC Committed Amount"), (ii) the sum of the aggregate principal amount of outstanding Revolving Loans plus outstanding LOC Obligations shall not at any time exceed the Revolving Committed Amount then in effect, (iii) all Letters of Credit shall be denominated in Dollars and (iv) Letters of Credit shall be issued for any lawful corporate purposes and shall be issued as standby letters of credit, including in connection with workers' compensation and other insurance programs. Except as otherwise expressly agreed in writing upon by all the Lenders, no Letter of Credit shall have an original expiry date more than twenty-four (24) months from the date of issuance; provided, however, so long as no Default or Event of Default has occurred and is continuing and subject to the other terms and conditions to the issuance of Letters of Credit hereunder, the expiry dates of Letters of Credit may be extended annually or periodically from time to time on the request of the Borrower or by operation of the terms of the applicable Letter of Credit to a date not more than twelve (12) months from the date of extension; provided, further, that, subject to Section 2.3(k), Letters of Credit may, as originally issued or as extended, have an expiry date extending beyond the Maturity Date. Each Letter of Credit shall comply with the related LOC Documents. The Existing Letters of Credit shall, as of the Closing Date, be deemed to have been issued as Letters of Credit hereunder and subject to and governed by the terms of this Agreement. The issuance and expiry date of each Letter of Credit shall be a Business Day. Each Letter of Credit issued hereunder shall be in a minimum original face amount of \$100,000 or such lesser amount as approved by the Issuing Lender. The Borrower's Reimbursement Obligations in respect of each Existing Letter of Credit, and each Lender's participation obligations in connection therewith, shall be governed by the terms of this Credit Agreement. Wells Fargo shall be the Issuing Lender on all Letters of Credit issued after the Closing Date

(b) Notice and Reports. The request for the issuance of a Letter of Credit shall be submitted to the Issuing Lender at least five (5) Business Days prior to the requested date of issuance. The Issuing Lender will promptly upon request provide to the Administrative Agent for dissemination to the Lenders a detailed report specifying the Letters of Credit which are then issued and outstanding and any activity with respect thereto which may have occurred since the date of any prior report, and including therein, among other things, the account party, the beneficiary, the face amount, expiry date as well as any payments or expirations which may have occurred. The Issuing Lender will further provide to the Administrative Agent promptly upon request copies of the Letters of Credit. The Issuing Lender will provide to the Administrative Agent promptly upon request a summary report of the nature and extent of LOC Obligations then outstanding.

(c) Participations. Each Lender, (i) on the Closing Date with respect to each Existing Letter of Credit and (ii) upon issuance of a Letter of Credit, shall be deemed to have purchased without recourse a risk participation from the Issuing Lender in such Letter of Credit and the obligations arising thereunder and any Collateral relating thereto, in each case in an amount equal to its Revolving Commitment Percentage of the obligations under such Letter of Credit and shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and be obligated to pay to the Issuing Lender therefor and discharge when due, its Revolving Commitment Percentage of the obligations arising under such Letter of Credit; provided that any Person that becomes a Lender after the Closing Date shall be deemed to have purchased a Participation Interest in all outstanding Letters of Credit on the date it becomes a Lender hereunder and any Letter of Credit issued on or after such date, in each case in accordance with the foregoing terms. Without limiting the scope and nature of each Lender's participation in any Letter of Credit, to the extent that the Issuing Lender has not been reimbursed as required hereunder or under any LOC Document, each such Lender shall pay to the Issuing Lender its Revolving Commitment Percentage of such unreimbursed drawing in same day funds pursuant to and in accordance with the provisions of subsection (d) hereof. The obligation of each Lender to so reimburse the Issuing Lender shall be absolute and unconditional and shall not be affected by the occurrence of a Default, an Event of Default or any other occurrence or event. Any such reimbursement shall not relieve or otherwise impair the obligation of the Borrower to reimburse the Issuing Lender under any Letter of Credit, together with interest as hereinafter provided.

(d) Reimbursement. In the event of any drawing under any Letter of Credit, the Issuing Lender will promptly notify the Borrower and the Administrative Agent. The Borrower shall reimburse the Issuing Lender on the day of drawing under any Letter of Credit if notified prior to 1:00 P.M. on a Business Day or, if after 1:00 P.M., on the following Business Day (either with the proceeds of a Revolving Loan obtained hereunder or otherwise) in same day funds as provided herein or in the LOC Documents. If the Borrower shall fail to reimburse the Issuing Lender as provided herein, the unreimbursed amount of such drawing shall automatically bear interest at a per annum rate equal to the Default Rate. Unless the Borrower shall immediately notify the Issuing Lender and the Administrative Agent of its intent to otherwise reimburse the Issuing

Lender, the Borrower shall be deemed to have requested a Mandatory LOC Borrowing in the amount of the drawing as provided in subsection (e) hereof, the proceeds of which will be used to satisfy the Reimbursement Obligations. The Borrower's Reimbursement Obligations hereunder shall be absolute and unconditional under all circumstances irrespective of any rights of set-off, counterclaim or defense to payment the Borrower may claim or have against the Issuing Lender, the Administrative Agent, the Lenders, the beneficiary of the Letter of Credit drawn upon or any other Person, including, without limitation, any defense based on any failure of the Borrower to receive consideration or the legality, validity, regularity or unenforceability of the Letter of Credit. The Administrative Agent will promptly notify the other Lenders of the amount of any unreimbursed drawing and each Lender shall promptly pay to the Administrative Agent for the account of the Issuing Lender, in Dollars and in immediately available funds, the amount of such Lender's Revolving Commitment Percentage of such unreimbursed drawing. Such payment shall be made on the Business Day such notice is received by such Lender from the Administrative Agent if such notice is received at or before 2:00 P.M., otherwise such payment shall be made at or before 12:00 P.M. on the Business Day next succeeding the Business Day such notice is received. If such Lender does not pay such amount to the Administrative Agent for the account of the Issuing Lender in full upon such request, such Lender shall, on demand, pay to the Administrative Agent for the account of the Issuing Lender interest on the unpaid amount during the period from the date of such drawing until such Lender pays such amount to the Administrative Agent for the account of the Issuing Lender in full at a rate per annum equal to, if paid within two (2) Business Days of the date of drawing, the Federal Funds Effective Rate and thereafter at a rate equal to the Alternate Base Rate. Each Lender's obligation to make such payment to the Issuing Lender, and the right of the Issuing Lender to receive the same, shall be absolute and unconditional, shall not be affected by any circumstance whatsoever and without regard to the termination of this Agreement or the Commitments hereunder, the existence of a Default or Event of Default or the acceleration of the Obligations hereunder and shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Repayment with Revolving Loans. On any day on which the Borrower shall have requested, or been deemed to have requested, a Revolving Loan to reimburse a drawing under a Letter of Credit, the Administrative Agent shall give notice to the Lenders that a Revolving Loan has been requested or deemed requested in connection with a drawing under a Letter of Credit, in which case a Revolving Loan borrowing comprised entirely of Alternate Base Rate Loans (each such borrowing, a "Mandatory LOC Borrowing") shall be made (without giving effect to any termination of the Commitments pursuant to Section 7.2) pro rata based on each Lender's respective Revolving Commitment Percentage (determined before giving effect to any termination of the Commitments pursuant to Section 7.2) and the proceeds thereof shall be paid directly to the Administrative Agent for the account of the Issuing Lender for application to the respective LOC Obligations. Each Lender hereby irrevocably agrees to make such Revolving Loans on the day such notice is received by the Lenders from the Administrative Agent if such notice is received at or before 2:00 P.M., otherwise such payment shall be made at or before 12:00 P.M. on the Business Day next succeeding the

day such notice is received, in each case notwithstanding (i) the amount of Mandatory LOC Borrowing may not comply with the minimum amount for borrowings of Revolving Loans otherwise required hereunder, (ii) whether any conditions specified in Section 4.2 are then satisfied, (iii) whether a Default or an Event of Default then exists, (iv) failure for any such request or deemed request for Revolving Loan to be made by the time otherwise required in Section 2.1(b), (v) the date of such Mandatory LOC Borrowing, or (vi) any reduction in the Revolving Committed Amount after any such Letter of Credit may have been drawn upon. In the event that any Mandatory LOC Borrowing cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the occurrence of a Bankruptcy Event), then each such Lender hereby agrees that it shall forthwith fund its Participation Interests in the outstanding LOC Obligations on the Business Day such notice to fund is received by such Lender from the Administrative Agent if such notice is received at or before 2:00 P.M., otherwise such payment shall be made at or before 12:00 Noon on the Business Day next succeeding the Business Day such notice is received; provided, further, that in the event any Lender shall fail to fund its Participation Interest as required herein, then the amount of such Lender's unfunded Participation Interest therein shall automatically bear interest payable by such Lender to the Administrative Agent for the account of the Issuing Lender upon demand, at the rate equal to, if paid within two (2) Business Days of such date, the Federal Funds Effective Rate, and thereafter at a rate equal to the Alternate Base Rate.

(f) Modification, Extension. The issuance of any supplement, modification, amendment, renewal, or extension to any Letter of Credit shall, for purposes hereof, be treated in all respects the same as the issuance of a new Letter of Credit hereunder.

(g) ISP98. Unless otherwise expressly agreed by the Issuing Lender and the Borrower, when a Letter of Credit is issued, the rules of the "International Standby Practices 1998," published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each standby Letter of Credit.

(h) Conflict with LOC Documents. In the event of any conflict between this Agreement and any LOC Document (including any letter of credit application and any LOC Documents relating to the Existing Letters of Credit), this Agreement shall control.

(i) Designation of Subsidiaries as Account Parties. Notwithstanding anything to the contrary set forth in this Agreement, including, without limitation, Section 2.3(a), a Letter of Credit issued hereunder may contain a statement to the effect that such Letter of Credit is issued for the account of a Subsidiary of the Borrower; provided that, notwithstanding such statement, the Borrower shall be the actual account party for all purposes of this Agreement for such Letter of Credit and such statement shall not affect the Borrower's Reimbursement Obligations hereunder with respect to such Letter of Credit.

(j) Cash Collateral. At any point in time in which there is a Defaulting Lender, the Issuing Lender may require the Borrower to Cash Collateralize the LOC Obligations pursuant to Section 2.20 (only to the extent that such LOC Obligations are not already Cash Collateralized by the Revolver Cash Collateral Account or otherwise).

(k) Letters of Credit Expiring After Maturity Date. With respect to any Letter of Credit with an expiry date after the Maturity Date (a “Cash Collateralized LC”), the Borrower shall deliver Cash Collateral to the Issuing Lender no later than the date that is thirty (30) days prior to the Maturity Date (the “LC Expiration Date”) in an amount equal to 105% of the face amount of any such Letter of Credit (the “LC Cash Collateral”). To the extent the Borrower fails to provide the LC Cash Collateral on the LC Expiration Date, the Borrower shall be deemed to have requested a Mandatory LOC Borrowing in an amount equal to 100% of the face amount of the Cash Collateralized LC as provided in Section 2.3(e) hereof, the proceeds of which will be delivered to the Issuing Lender as Cash Collateral. In the event that any Mandatory LOC Borrowing cannot for any reason be made on the LC Expiration Date, then each such Lender hereby agrees that it shall promptly fund its Participation Interests in such Cash Collateralized LC (which shall be delivered to the Issuing Lender as Cash Collateral). Upon the Cash Collateralization of any Letter of Credit pursuant to this Section 2.3(k), such Cash Collateralized LC shall be deemed to be issued outside of this Agreement; provided, that, (i) the fees associated with such Letter of Credit shall continue to accrue, but shall thereafter be solely for the benefit of the Issuing Lender and (ii) any principal, interest or other amounts owed or owing to the Lenders in connection with a Mandatory LOC Borrowing or a funded Participation Interest hereunder shall continue to be owed and paid in accordance with the terms of this Agreement.

**Section 2.4 [Reserved].**

**Section 2.5 Fees.**

(a) Commitment Fee. Subject to Section 2.21, in consideration of the Revolving Commitments, the Borrower agrees to pay to the Administrative Agent, for the ratable benefit of the Lenders, a commitment fee (the “Commitment Fee”) in an amount equal the Applicable Margin per annum on the average daily unused amount of the Revolving Committed Amount. The Commitment Fee shall be calculated quarterly in arrears. For purposes of computation of the Commitment Fee, LOC Obligations shall be considered usage of the Revolving Committed Amount. The Commitment Fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter.

(b) Letter of Credit Fees. Subject to Section 2.3(k) or 2.21, in consideration of the LOC Commitments, the Borrower agrees to pay to the Administrative Agent, for the ratable benefit of the Lenders, a fee (the “Letter of Credit Fee”) equal to the Applicable Margin for Revolving Loans that are LIBOR Rate Loans per annum on the average daily maximum amount available to be drawn under each Letter of Credit from the date of issuance to the date of expiration. The Letter of Credit Fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter.

(c) Issuing Lender Fees. In addition to the Letter of Credit Fees payable pursuant to subsection (b) hereof, the Borrower shall pay to the Issuing Lender for its own account without sharing by the other Lenders the reasonable and customary charges from time to time of the Issuing Lender with respect to the amendment, transfer, administration, cancellation and conversion of, and drawings under, such Letters of Credit (collectively, the “Issuing Lender Fees”). The Issuing Lender may charge, and retain for its own account without sharing by the other Lenders, an additional facing fee (the “Letter of Credit Facing Fee”) of 0.125% per annum on the average daily maximum amount available to be drawn under each such Letter of Credit issued by it. The Issuing Lender Fees and the Letter of Credit Facing Fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter.

(d) Administrative Fee. The Borrower agrees to pay to the Administrative Agent the annual administrative fee as described in the Fee Letter.

#### **Section 2.6 Commitment Reductions.**

(a) Voluntary Reductions. The Borrower shall have the right to terminate or permanently reduce the unused portion of the Revolving Committed Amount at any time or from time to time upon not less than five (5) Business Days’ prior written notice to the Administrative Agent (which shall notify the Lenders thereof as soon as practicable) of each such termination or reduction, which notice shall specify the effective date thereof and the amount of any such reduction which shall be in a minimum amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof and shall be irrevocable and effective upon receipt by the Administrative Agent; provided that no such reduction or termination shall be permitted if after giving effect thereto, and to any prepayments of the Revolving Loans made on the effective date thereof, the sum of the aggregate principal amount of outstanding Revolving Loans plus outstanding LOC Obligations would exceed the Revolving Committed Amount then in effect. Any reduction in the Revolving Committed Amount shall be applied to the Commitment of each Lender in accordance with its Revolving Commitment Percentage. To the extent the Borrower reduces the Revolving Committed Amount in accordance with this Section 2.6(a), excess proceeds in the Revolver Cash Collateral Account shall be returned to the Borrower on a dollar-for-dollar basis.

(b) LOC Committed Amount. If the Revolving Committed Amount is reduced below the then current LOC Committed Amount, the LOC Committed Amount shall automatically be reduced by an amount such that the LOC Committed Amount equals the Revolving Committed Amount.

(c) Maturity Date. The Revolving Commitments and the LOC Commitment shall automatically terminate on the Maturity Date.

## Section 2.7 Prepayments.

(a) Optional Prepayments and Repayments. The Borrower shall have the right to repay the Revolving Loans in whole or in part from time to time; provided, however, that each partial prepayment or repayment of (i) Revolving Loans that are Alternate Base Rate Loans shall be in a minimum principal amount of \$500,000 and integral multiples of \$250,000 in excess thereof (or the remaining outstanding principal amount) and (ii) Revolving Loans that LIBOR Rate Loans shall be in a minimum principal amount of \$500,000 and integral multiples of \$250,000 in excess thereof (or the remaining outstanding principal amount). The Borrower shall give three Business Days' irrevocable notice of prepayment in the case of LIBOR Rate Loans and same-day irrevocable notice on any Business Day in the case of Alternate Base Rate Loans, to the Administrative Agent (which shall notify the Lenders thereof as soon as practicable). To the extent the Borrower elects to repay the Revolving Loans, amounts prepaid under this Section shall be applied to the Revolving Loans of the Lenders in accordance with their respective Revolving Commitment Percentages. Within the foregoing parameters, prepayments under this Section shall be applied first to Alternate Base Rate Loans and then to LIBOR Rate Loans in direct order of Interest Period maturities. All prepayments under this Section shall be subject to Section 2.15, but otherwise without premium or penalty. Interest on the principal amount prepaid shall be payable on the next occurring Interest Payment Date that would have occurred had such loan not been prepaid.

(b) Mandatory Prepayments.

(i) Revolving Committed Amount. If at any time after the Cash Collateral Release Date, the sum of the aggregate principal amount of outstanding Revolving Loans plus outstanding LOC Obligations shall exceed the Revolving Committed Amount, the Borrower shall immediately prepay the Revolving Loans and (after all Revolving Loans have been repaid) Cash Collateralize the LOC Obligations in an amount sufficient to eliminate such excess (such prepayment to be applied as set forth in clause (v) below).

(ii) Asset Dispositions. Promptly following any Asset Disposition (or related series of Asset Dispositions) after the Cash Collateral Release Date, the Borrower shall prepay the Revolving Loans in an aggregate amount equal to one hundred percent (100%) of the Net Cash Proceeds derived from such Asset Disposition (or related series of Asset Dispositions) (such prepayment to be applied as set forth in clause (v) below); provided, however, that, so long as no Default or Event of Default has occurred and is continuing, such Net Cash Proceeds shall not be required to be so applied (A) until the aggregate amount of the Net Cash Proceeds derived from any Asset Dispositions in any fiscal year of the Borrower is equal to or greater than \$2,500,000 and (B) to the extent the Borrower delivers to the Administrative Agent a certificate stating that the Credit Parties intend to use such Net Cash Proceeds to acquire capital assets useful to the business of the Credit Parties within 360 days of the receipt of such Net Cash Proceeds, it being expressly agreed that Net Cash Proceeds not so reinvested within such time period shall be applied to prepay the Revolving Loans (such prepayment to be applied as set forth in clause (v) below).

(iii) Debt Issuances. Immediately upon receipt by any Credit Party or any of its Subsidiaries of proceeds from any Debt Issuance after the Cash Collateral Release Date, the Borrower shall prepay the Revolving Loans in an aggregate amount equal to one hundred percent (100%) of the Net Cash Proceeds of such Debt Issuance (such prepayment to be applied as set forth in clause (v) below).

(iv) Extraordinary Receipts. Promptly upon receipt by any Credit Party or any of its Subsidiaries (other than Foreign Subsidiaries) of proceeds from any Extraordinary Receipt after the Cash Collateral Release Date, the Borrower shall prepay the Revolving Loans in an aggregate amount equal to one hundred percent (100%) of the Net Cash Proceeds of such Extraordinary Receipt (such prepayment to be applied as set forth in clause (v) below); provided, however, that, so long as no Default or Event of Default has occurred and is continuing, Net Cash Proceeds from Recovery Events shall not be required to be so applied to the extent the Borrower delivers to the Administrative Agent a certificate stating that Credit Parties intend to use such Net Cash Proceeds to acquire capital assets useful to the business of the Credit Parties within 360 days of the receipt of such Net Cash Proceeds, it being expressly agreed that any Net Cash Proceeds not so reinvested within such time period shall be applied to prepay the Revolving Loans (such prepayment to be applied as set forth in clause (v) below).

(v) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section shall be applied first to the outstanding Revolving Loans (without a simultaneous corresponding reduction of the Revolving Committed Amount) and (2) only with respect to (b)(i) above, second to Cash Collateralize the LOC Obligations. Within the parameters of the applications set forth above, prepayments shall be applied first to Alternate Base Rate Loans and then to LIBOR Rate Loans in direct order of Interest Period maturities. All prepayments under this Section shall be subject to Section 2.15 and be accompanied by interest on the principal amount prepaid through the date of prepayment, but otherwise without premium or penalty.

(c) Bank Product Obligations Unaffected. Any repayment or prepayment made pursuant to this Section shall not affect the Borrower's obligation to continue to make payments under any Bank Product, which shall remain in full force and effect notwithstanding such repayment or prepayment, subject to the terms of such Bank Product.

## **Section 2.8 Default Rate and Payment Dates.**

(a) If all or a portion of the principal amount of any Revolving Loan which is a LIBOR Rate Loan shall not be paid when due or continued as a LIBOR Rate Loan in

accordance with the provisions of Section 2.9 (whether at the stated maturity, by acceleration or otherwise), such overdue principal amount of such Revolving Loan shall be converted to an Alternate Base Rate Loan at the end of the Interest Period applicable thereto.

(b) Upon the occurrence and during the continuance of a (i) Bankruptcy Event or a Payment Event of Default, the principal of and, to the extent permitted by law, interest on the Revolving Loans and any other amounts owing hereunder or under the other Credit Documents shall automatically bear interest at a rate per annum which is equal to the Default Rate and (ii) any other Event of Default hereunder, at the option of the Required Lenders, the principal of and, to the extent permitted by law, interest on the Revolving Loans and any other amounts owing hereunder or under the other Credit Documents shall automatically bear interest, at a per annum rate which is equal to the Default Rate, in each case from the date of such Event of Default until such Event of Default is waived in accordance with Section 9.1. Any default interest owing under this Section 2.8(b) shall be due and payable on the earlier to occur of (x) demand by the Administrative Agent (which demand the Administrative Agent shall make if directed by the Required Lenders) and (y) the Maturity Date.

#### **Section 2.9 Conversion Options.**

(a) The Borrower may elect from time to time to convert Alternate Base Rate Loans to LIBOR Rate Loans or to continue LIBOR Rate Loans, by delivering a Notice of Conversion/Extension to the Administrative Agent at least three Business Days prior to the proposed date of conversion or continuation. In addition, the Borrower may elect from time to time to convert all or any portion of a LIBOR Rate Loan to an Alternate Base Rate Loan by giving the Administrative Agent irrevocable written notice thereof by 11:00 A.M. one (1) Business Day prior to the proposed date of conversion. If the date upon which an Alternate Base Rate Loan is to be converted to a LIBOR Rate Loan is not a Business Day, then such conversion shall be made on the next succeeding Business Day and during the period from such last day of an Interest Period to such succeeding Business Day such Revolving Loan shall bear interest as if it were an Alternate Base Rate Loan. LIBOR Rate Loans may only be converted to Alternate Base Rate Loans on the last day of the applicable Interest Period. If the date upon which a LIBOR Rate Loan is to be converted to an Alternate Base Rate Loan is not a Business Day, then such conversion shall be made on the next succeeding Business Day and during the period from such last day of an Interest Period to such succeeding Business Day such Revolving Loan shall bear interest as if it were an Alternate Base Rate Loan. All or any part of outstanding Alternate Base Rate Loans may be converted as provided herein; provided that (i) no Revolving Loan may be converted into a LIBOR Rate Loan when any Default or Event of Default has occurred and is continuing and (ii) partial conversions shall be in an aggregate principal amount of \$500,000 or a whole multiple of \$250,000 in excess thereof. All or any part of outstanding LIBOR Rate Loans may be converted as provided herein; provided that partial conversions shall be in an aggregate principal amount of \$500,000 or a whole multiple of \$250,000 in excess thereof.

(b) Any LIBOR Rate Loans may be continued as such upon the expiration of an Interest Period with respect thereto by compliance by the Borrower with the notice provisions contained in Section 2.9(a); provided, that no LIBOR Rate Loan may be continued as such when any Default or Event of Default has occurred and is continuing, in which case such Revolving Loan shall be automatically converted to an Alternate Base Rate Loan at the end of the applicable Interest Period with respect thereto. If the Borrower shall fail to give timely notice of an election to continue a LIBOR Rate Loan, or the continuation of LIBOR Rate Loans is not permitted hereunder, such LIBOR Rate Loans shall be automatically converted to Alternate Base Rate Loans at the end of the applicable Interest Period with respect thereto.

**Section 2.10 Computation of Interest and Fees; Usury.**

(a) Interest payable hereunder with respect to any Alternate Base Rate Loan based on the Prime Rate shall be calculated on the basis of a year of 365 days (or 366 days, as applicable) for the actual days elapsed. All other fees, interest and all other amounts payable hereunder shall be calculated on the basis of a 360-day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of each determination of a LIBOR Rate on the Business Day of the determination thereof. Any change in the interest rate on a Revolving Loan resulting from a change in the Alternate Base Rate shall become effective as of the opening of business on the day on which such change in the Alternate Base Rate shall become effective. The Administrative Agent shall promptly notify the Borrower and the Lenders of the effective date and the amount of each such change.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the computations used by the Administrative Agent in determining any interest rate.

(c) It is the intent of the Lenders and the Credit Parties to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between the Lenders and the Credit Parties are hereby limited by the provisions of this subsection which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including, but not limited to, prepayment or acceleration of the maturity of any Obligation), shall the interest taken, reserved, contracted for, charged, or received under this Agreement, under the Revolving Loan Notes or otherwise, exceed the maximum nonusurious amount permissible under applicable law. If, from any possible construction of any of the Credit Documents or any other document, interest would otherwise be payable in excess of the maximum nonusurious amount, any such construction shall be subject to the provisions of this paragraph and such interest shall be automatically reduced to the maximum nonusurious amount permitted under applicable law, without the necessity of execution of any amendment or new document. If any Lender shall ever receive anything of value which is characterized as interest on the

Revolving Loans under applicable law and which would, apart from this provision, be in excess of the maximum nonusurious amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Revolving Loans and not to the payment of interest, or refunded to the Borrower or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal amount of the Revolving Loans. The right to demand payment of the Revolving Loans or any other Indebtedness evidenced by any of the Credit Documents does not include the right to receive any interest which has not otherwise accrued on the date of such demand, and the Lenders do not intend to charge or receive any unearned interest in the event of such demand. All interest paid or agreed to be paid to the Lenders with respect to the Revolving Loans shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of the Revolving Loans so that the amount of interest on account of such Indebtedness does not exceed the maximum nonusurious amount permitted by applicable law.

**Section 2.11 Pro Rata Treatment and Payments.**

(a) Allocation of Payments Prior to Exercise of Remedies. Each borrowing of Revolving Loans and any reduction of the Revolving Commitments shall be made pro rata according to the respective Revolving Commitment Percentages of the Lenders. Unless otherwise required by the terms of this Agreement, each payment under this Agreement shall be applied, first, to any fees then due and owing by the Borrower pursuant to Section 2.5, second, to interest then due and owing hereunder of the Borrower and, third, to principal then due and owing hereunder and under this Agreement of the Borrower. Each payment on account of any fees pursuant to Section 2.5 shall be made pro rata in accordance with the respective amounts due and owing (except as to the Letter of Credit Facing Fees and the Issuing Lender Fees which shall be paid to the Issuing Lender). Each optional repayment and prepayment by the Borrower on account of principal of and interest on the Revolving Loans shall be applied to such Revolving Loans, as applicable, on a pro rata basis and, to the extent applicable, in accordance with the terms of Section 2.7(a) hereof. Each mandatory prepayment on account of principal of the Revolving Loans shall be applied to such Revolving Loans, as applicable, on a pro rata basis and, to the extent applicable, in accordance with Section 2.7(b). All payments (including prepayments) to be made by the Borrower on account of principal, interest and fees shall be made without defense, set-off or counterclaim and shall be made to the Administrative Agent for the account of the Lenders at the Administrative Agent's office specified on Section 9.2 in Dollars and in immediately available funds not later than 1:00 P.M. on the date when due. The Administrative Agent shall distribute such payments to the Lenders entitled thereto promptly upon receipt in like funds as received. If any payment hereunder (other than payments on the LIBOR Rate Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day, and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. If any payment on a LIBOR Rate Loan becomes due and payable on a day other than a Business Day, such payment date shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day.

(b) Allocation of Payments After Exercise of Remedies. Notwithstanding any other provisions of this Agreement to the contrary, after the exercise of remedies (other than the application of default interest pursuant to Section 2.8) by the Administrative Agent or the Lenders pursuant to Section 7.2 (or after the Commitments shall automatically terminate and the Revolving Loans (with accrued interest thereon) and all other amounts under the Credit Documents (including, without limitation, the maximum amount of all contingent liabilities under Letters of Credit) shall automatically become due and payable in accordance with the terms of such Section), all amounts collected or received by the Administrative Agent or any Lender on account of the Credit Party Obligations or any other amounts outstanding under any of the Credit Documents or in respect of the Collateral shall be paid over or delivered as follows (irrespective of whether the following costs, expenses, fees, interest, premiums, scheduled periodic payments or Credit Party Obligations are allowed, permitted or recognized as a claim in any proceeding resulting from the occurrence of a Bankruptcy Event):

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees) of the Administrative Agent in connection with enforcing the rights of the Lenders under the Credit Documents and any protective advances made by the Administrative Agent with respect to the Collateral under or pursuant to the terms of the Security Documents;

SECOND, to the payment of any fees owed to the Administrative Agent and the Issuing Lender;

THIRD, to the payment of all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees) of each of the Lenders in connection with enforcing its rights under the Credit Documents or otherwise with respect to the Credit Party Obligations owing to such Lender;

FOURTH, to the payment of all of the Credit Party Obligations consisting of accrued fees and interest, and including, with respect to any Bank Product, any fees, premiums and scheduled periodic payments due under such Bank Product and any interest accrued thereon;

FIFTH, to the payment of the outstanding principal amount of the Credit Party Obligations and the payment or Cash Collateralization of the outstanding LOC Obligations, and including with respect to any Bank Product, any breakage, termination or other payments due under such Bank Product and any interest accrued thereon;

SIXTH, to all other Credit Party Obligations and other obligations which shall have become due and payable under the Credit Documents or otherwise and not repaid pursuant to clauses "FIRST" through "FIFTH" above; and

SEVENTH, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (a) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; (b) each of the Lenders and any Bank Product Provider shall receive an amount equal to its pro rata share (based on the proportion that the then outstanding Revolving Loans and LOC Obligations held by such Lender or the outstanding obligations payable to such Bank Product Provider bears to the aggregate then outstanding Revolving Loans and LOC Obligations and obligations payable under all Bank Products) of amounts available to be applied pursuant to clauses "THIRD", "FOURTH", "FIFTH" and "SIXTH" above; and (c) to the extent that any amounts available for distribution pursuant to clause "FIFTH" above are attributable to the issued but undrawn amount of outstanding Letters of Credit, such amounts shall be held by the Administrative Agent in a Cash Collateral account and applied (i) first, to reimburse the Issuing Lender from time to time for any drawings under such Letters of Credit and (ii) then, following the expiration of all Letters of Credit, to all other obligations of the types described in clauses "FIFTH" and "SIXTH" above in the manner provided in this Section. Notwithstanding the foregoing terms of this Section, only Collateral proceeds and payments under the Guaranty (as opposed to ordinary course principal, interest and fee payments hereunder) shall be applied to obligations under any Bank Product. Amounts distributed with respect to any Bank Product Debt shall be the last Bank Product Amount reported to the Administrative Agent; provided that any such Bank Product Provider may provide an updated Bank Product Amount to the Administrative Agent prior to payments made pursuant to this Section. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Bank Product Debt, but may rely upon written notice of the amount (setting forth a reasonably detailed calculation) from the applicable Bank Product Provider. In the absence of such notice, the Administrative Agent may assume the amount to be distributed is the Bank Product Amount last reported to the Administrative Agent.

#### **Section 2.12 Non-Receipt of Funds by the Administrative Agent.**

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received written notice from a Lender prior to the proposed date of any Extension of Credit that such Lender will not make available to the Administrative Agent such Lender's share of such Extension of Credit, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with this Agreement and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Extension of Credit available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to

pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to Alternate Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Extension of Credit to the Administrative Agent, then the amount so paid shall constitute such Lender's Revolving Loan included in such Extension of Credit. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the Issuing Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under subsections (a) and (b) of this Section shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Revolving Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Extension of Credit set forth in Article IV are not satisfied or waived in accordance with the terms thereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Loans, to fund participations in Letters of Credit and to make payments pursuant to Section 9.5(c) are several and not joint. The failure of any Lender

to make any Revolving Loan, to fund any such participation or to make any such payment under Section 9.5(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Revolving Loan, to purchase its participation or to make its payment under Section 9.5(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Revolving Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Revolving Loan in any particular place or manner.

#### **Section 2.13 Inability to Determine Interest Rate.**

Notwithstanding any other provision of this Agreement, if (a) the Administrative Agent shall reasonably determine (which determination shall be conclusive and binding absent manifest error) that, by reason of circumstances affecting the relevant market, reasonable and adequate means do not exist for ascertaining the LIBOR Rate for such Interest Period, or (b) the Required Lenders shall reasonably determine (which determination shall be conclusive and binding absent manifest error) that the LIBOR Rate does not adequately and fairly reflect the cost to such Lenders of funding LIBOR Rate Loans that the Borrower has requested be outstanding as a LIBOR Tranche during such Interest Period, the Administrative Agent shall forthwith give telephone notice of such determination, confirmed in writing, to the Borrower, and the Lenders at least two (2) Business Days prior to the first day of such Interest Period. Unless the Borrower shall have notified the Administrative Agent upon receipt of such telephone notice that it wishes to rescind or modify its request regarding such LIBOR Rate Loans, any Revolving Loans that were requested to be made as LIBOR Rate Loans shall be made as Alternate Base Rate Loans and any Revolving Loans that were requested to be converted into or continued as LIBOR Rate Loans shall remain as or be converted into Alternate Base Rate Loans. Until any such notice has been withdrawn by the Administrative Agent, no further Revolving Loans shall be made as, continued as, or converted into, LIBOR Rate Loans for the Interest Periods so affected.

#### **Section 2.14 Yield Protection.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate) or the Issuing Lender;

(ii) subject any Recipient to any Taxes (other than Indemnified Taxes and Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the Issuing Lender or the London interbank market any other condition, cost or expense affecting this Agreement or LIBOR Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any LIBOR Rate Loan or of maintaining its obligation to make any such Revolving Loan, or to increase the cost to such Lender, such Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, Issuing Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Issuing Lender or other Recipient, the Borrower will pay to such Lender, Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the Issuing Lender determines that any Change in Law affecting such Lender or the Issuing Lender or any lending office of such Lender or such Lender's or the Issuing Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Lender's capital or on the capital of such Lender's or the Issuing Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Revolving Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Lender's policies and the policies of such Lender's or the Issuing Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the Issuing Lender setting forth the amount or amounts necessary to compensate such Lender or the Issuing Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Lender, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the Issuing Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Lender's right to demand such compensation,

provided that the Borrower shall not be required to compensate a Lender or the Issuing Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date such Lender or Issuing Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or Issuing Lender's intention to claim compensation therefore (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

**Section 2.15 Compensation for Losses; Eurocurrency Liabilities.**

(a) Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(i) any continuation, conversion, payment or prepayment of any Revolving Loan other than an Alternate Base Rate Loan on a day other than the last day of the Interest Period for such Revolving Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(ii) any failure by the Borrower (for a reason other than the failure of such Lender to make a Revolving Loan) to prepay, borrow, continue or convert any Revolving Loan other than an Alternate Base Rate Loan on the date or in the amount notified by the Borrower; or

(iii) any assignment of a LIBOR Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 2.19;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Revolving Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section, each Lender shall be deemed to have funded each LIBOR Rate Loan made by it at the LIBOR Rate for such Revolving Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such LIBOR Rate Loan was in fact so funded.

(b) The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves under Regulation D with respect to "Eurocurrency liabilities" within the meaning of Regulation D, or under any similar or successor regulation with respect to Eurocurrency liabilities or Eurocurrency funding, additional interest on the unpaid principal amount of each LIBOR Loan equal to the actual costs of such reserves allocated to such LIBOR Loan by such Lender (as determined by such

Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such LIBOR Loan, provided the Borrower shall have received at least fifteen (15) Business Days prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice fifteen (15) Business Days prior to the relevant interest payment date, such additional interest shall be due and payable fifteen (15) Business Days from receipt of such notice.

#### **Section 2.16 Taxes.**

(a) Issuing Lender. For purposes of this Section 2.16, the term “Lender” includes any Issuing Lender.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Credit Party under any Credit Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall make such deduction and timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that after making such deductions (including such deductions applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deductions been made.

(c) Payment of Other Taxes by the Borrower. The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Credit Parties. The Credit Parties shall jointly and severally indemnify each Recipient, within 10 Business Days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 9.6(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable

expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 2.16, such Credit Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders. (i) Any Recipient that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.16(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Credit Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

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

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that (A) such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (B) the interest payments in question are not effectively connected with a U.S. trade or business conducted by such Foreign Lender or are effectively connected but are not includible in the Foreign Lender’s gross income for U.S. federal income tax purposes under an income tax treaty (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN; or

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or participating Lender granting a typical participation), executed originals of IRS Form W-8IMY, accompanied by a Form W-8ECI, W-8BEN, U.S. Tax Compliance Certificate, Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership (and not a participating Lender) and one or more beneficial owners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such beneficial owner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to

comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised reasonably and in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.16 (including additional amounts pursuant to this Section 2.16), it shall promptly pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 2.16 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

## **Section 2.17 Indemnification; Nature of Issuing Lender's Duties.**

(a) In addition to its other obligations under Section 2.3, the Credit Parties hereby agree to protect, indemnify, pay and save the Issuing Lender and each Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that the Issuing Lender or such Lender may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit or (ii) the failure of the Issuing Lender to honor a drawing under a Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority (all such acts or omissions, herein called "Government Acts").

(b) As between the Credit Parties, the Issuing Lender and each Lender, the Credit Parties shall assume all risks of the acts, omissions or misuse of any Letter of Credit by the beneficiary thereof. Neither the Issuing Lender nor any Lender shall be responsible: (i) for the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (iii) for failure of the beneficiary of a Letter of Credit to comply fully with conditions required in order to draw upon a Letter of Credit; (iv) for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) for errors in interpretation of technical terms; (vi) for any loss or delay in the transmission or otherwise of any document required in order to make a drawing under a Letter of Credit or of the proceeds thereof; and (vii) for any consequences arising from causes beyond the control of the Issuing Lender or any Lender, including, without limitation, any Government Acts. None of the above shall affect, impair, or prevent the vesting of the Issuing Lender's rights or powers hereunder.

(c) In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by the Issuing Lender or any Lender, under or in connection with any Letter of Credit or the related certificates, if taken or omitted in the absence of gross negligence or willful misconduct, shall not put such Issuing Lender or such Lender under any resulting liability to the Credit Parties. It is the intention of the parties that this Agreement shall be construed and applied to protect and indemnify the Issuing Lender and each Lender against any and all risks involved in the issuance of the Letters of Credit, all of which risks are hereby assumed by the Credit Parties, including, without limitation, any and all risks of the acts or omissions, whether rightful or wrongful, of any Government Authority. The Issuing Lender and the Lenders shall not, in any way, be liable for any failure by the Issuing Lender or anyone else to pay any drawing under any Letter of Credit as a result of any Government Acts or any other cause beyond the control of the Issuing Lender and the Lenders.

(d) Nothing in this Section is intended to limit the Reimbursement Obligation of the Borrower contained in Section 2.3(d) hereof. The obligations of the Credit Parties under this Section shall survive the termination of this Agreement. No act or omissions of any current or prior beneficiary of a Letter of Credit shall in any way affect or impair the rights of the Issuing Lender and the Lenders to enforce any right, power or benefit under this Agreement.

(e) Notwithstanding anything to the contrary contained in this Section, the Credit Parties shall have no obligation to indemnify the Issuing Lender or any Lender in respect of any liability incurred by the Issuing Lender or such Lender arising out of the gross negligence or willful misconduct of the Issuing Lender (including action not taken by the Issuing Lender or such Lender), as determined by a court of competent jurisdiction or pursuant to arbitration.

#### **Section 2.18 Illegality.**

Notwithstanding any other provision of this Credit Agreement, if any Change in Law shall make it unlawful for such Lender or its LIBOR Lending Office to make or maintain LIBOR Rate Loans as contemplated by this Credit Agreement or to obtain in the interbank eurodollar market through its LIBOR Lending Office the funds with which to make such Revolving Loans, (a) such Lender shall promptly notify the Administrative Agent and the Borrower thereof, (b) the commitment of such Lender hereunder to make LIBOR Rate Loans or continue LIBOR Rate Loans as such shall forthwith be suspended until the Administrative Agent shall give notice that the condition or situation which gave rise to the suspension shall no longer exist, and (c) such Lender's Revolving Loans then outstanding as LIBOR Rate Loans, if any, shall be converted on the last day of the Interest Period for such Revolving Loans or within such earlier period as required by law as Alternate Base Rate Loans. The Borrower hereby agrees to pay any Lender, within two (2) Business Days of its demand, any additional amounts necessary to compensate such Lender for actual and direct costs (but not including anticipated profits) reasonably incurred by such Lender in making any repayment in accordance with this Section including, but not limited to, any interest or fees payable by such Lender to lenders of funds obtained by it in order to make or maintain its LIBOR Rate Loans hereunder. A certificate (which certificate shall include a description of the basis for the computation) as to any additional amounts payable pursuant to this Section submitted by such Lender, through the Administrative Agent, to the Borrower shall be conclusive in the absence of manifest error. Each Lender agrees to use reasonable efforts (including reasonable efforts to change its LIBOR Lending Office) to avoid or to minimize any amounts which may otherwise be payable pursuant to this Section; provided, however, that such efforts shall not cause the imposition on such Lender of any additional costs or legal or regulatory burdens deemed by such Lender in its sole discretion to be material.

#### **Section 2.19 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.14, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall (at the request of the

Borrower) use reasonable best efforts to designate a different lending office for funding or booking its Revolving Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or Section 2.16, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.19(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.6), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.14 or Section 2.16) and obligations under this Agreement and the related Credit Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 9.6;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Revolving Loans and participations in Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Credit Documents (including any amounts under Section 2.15) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**Section 2.20 Cash Collateral.**

(a) Cash Collateral. At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or the Issuing Lender (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize all Fronting Exposure of the Issuing Lender with respect to such Defaulting Lender (determined after giving effect to Section 2.21(b) and any Cash Collateral provided by the Defaulting Lender) to the extent such Fronting Exposure is not already Cash Collateralized by the Revolver Cash Collateral Account or otherwise.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lenders and the Lenders, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligations to which such Cash Collateral may be applied pursuant to clause (c) below. If at any time the Administrative Agent or Issuing Lender determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure, the Borrower will, promptly upon demand by the Administrative Agent or Issuing Lender pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section or Section 2.21 in respect of Letters of Credit, shall be held and applied to the satisfaction of the specific LOC Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall no longer be required to be held as Cash Collateral pursuant to this Section 2.20 following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent, each Issuing Lender that there exists excess Cash Collateral; provided that, Subject to Section 2.21, the Person providing Cash Collateral and each applicable Issuing Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations.

## Section 2.21 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 9.1.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.7 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Lender hereunder; *third*, to Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with Section 2.20; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Revolving Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Revolving Loans under this Agreement and (y) Cash Collateralize the Issuing Lender's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement in accordance with Section 2.20; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Lenders against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Revolving Loans or LOC Obligations in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Revolving Loans were made or the related Letters of Credit were issued at a time

when the conditions set forth in Section 4.2 were satisfied or waived, such payment shall be applied solely to pay the Revolving Loans of, and LOC Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Revolving Loans of, or LOC Obligations owed to, such Defaulting Lender until such time as all Revolving Loans and funded and unfunded participations in LOC Obligations are held by the Lenders pro rata in accordance with the Commitments under the applicable facility without giving effect to Section 2.21(a) (iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.21(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Commitment Fees. No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Letter of Credit Fees. Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant Section 2.20.

(C) Reallocation of Fees. With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in LOC Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each Issuing Lender the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in LOC Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that (x) the conditions set forth in Section 4.2 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the

Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time) and (y) such reallocation does not cause the aggregate Committed Funded Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 2.20.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and Issuing Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.21(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Lender is a Defaulting Lender, no Issuing Lender shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

#### **Section 2.22 Incremental Revolving Facility Increase.**

(a) Incremental Revolving Facility Increases. Subject to the terms and conditions set forth herein, the Borrower shall have the right, at any time and from time to time prior to the Maturity Date, to incur additional Indebtedness under this Agreement in the form of an increase to the Revolving Committed Amount (each, a "Revolving Facility Increase") by an aggregate principal amount for all such Revolving Facility Increases of up to \$25,000,000 ("Incremental Increase Amount").

(b) Terms and Conditions. The following terms and conditions shall apply to any Revolving Facility Increase: (i) no Default or Event of Default shall exist immediately prior to or after giving effect to such Revolving Facility Increase, (ii) the other terms and documentation will be reasonably satisfactory to the Administrative Agent, (iii) any loans made pursuant to any Revolving Facility Increase shall constitute Credit Party Obligations and will be secured and guaranteed with the other Credit Party Obligations on a pari passu basis, (iv) any such Revolving Facility Increase shall have a maturity date no sooner than the Maturity Date, (v) any Lenders providing such Revolving Facility Increase shall be entitled to the same voting rights as the existing Lenders and shall be entitled to receive proceeds of prepayments on the same basis as the existing Lenders, (vi) any such Revolving Facility Increase shall be in a minimum principal amount of \$2,000,000 and integral multiples of \$1,000,000 in excess thereof (or the remaining amount of the Incremental Increase Amount, if less), (vii) the proceeds of any such Revolving Facility Increase will be used for the purposes set forth in Section 3.11, (viii) the Borrower shall execute a Revolving Loan Note in favor of any new Lender or any existing Lender requesting a Revolving Loan Note, (ix) the conditions to Extensions of Credit in Section 4.2 shall have been satisfied, (x) the Administrative Agent shall have received (A) upon request of the Administrative Agent, an opinion or opinions (including, if reasonably requested by the Administrative Agent, local counsel opinions) of counsel for the Credit Parties, addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent, (B) any authorizing corporate documents as the Administrative Agent may reasonably request and (C) if applicable, a duly executed Notice of Borrowing, (xi) the Administrative Agent shall have received from the Borrower updated financial projections and an officer's certificate, in each case in form and substance reasonably satisfactory to the Administrative Agent, demonstrating that, after giving effect to any such Revolving Facility Increase on a Pro Forma Basis, the Borrower will be in compliance with the financial covenants set forth in Section 5.9 and (xii) Administrative Agent shall have received evidence from the Borrower, demonstrating that, after giving effect to any such Revolving Facility Increase on a Pro Forma Basis, the Borrower will have an Adjusted Leverage Ratio of less than 6.00 to 1.00 recomputed as of the end of the four fiscal quarter period most recently ended for which financial statements are available.

(c) Applicable Margin and Yield. The Applicable Margin and any other components of yield on any Revolving Facility Increase payable to the Lenders making such Revolving Facility Increase may be higher than the then current Applicable Margin (or any other components of yield) on the Revolving Loans calculating yield in the same manner but in each case by no more than 50 basis points (it being understood that the Revolving Loan pricing will be increased and/or additional fees will be paid to Lenders holding Revolving Commitments to the extent necessary to satisfy such requirement).

(d) Reallocation. In connection with the closing of any Revolving Facility Increase, the outstanding Revolving Loans and Participation Interests shall be reallocated by causing such fundings and repayments (which shall not be subject to any processing and/or recordation fees) among the Lenders (which the Borrower shall be responsible for

any costs arising under Section 2.15 resulting from such reallocation and repayments) of Revolving Loans as necessary such that, after giving effect to such Revolving Facility Increase, each Lender will hold Revolving Loans and Participation Interests based on its Revolving Commitment Percentage (after giving effect to such Revolving Facility Increase).

(e) Participation. Participation in any such Revolving Facility Increase may be offered to each of the existing Lenders, but each such Lender shall have no obligation to provide all or any portion of such Revolving Facility Increase. The Borrower may invite other banks, financial institutions and investment funds reasonably acceptable to the Administrative Agent (such consent not to be unreasonably withheld or delayed) to join this Credit Agreement as Lenders hereunder for any portion of such Revolving Facility Increase; provided that such other banks, financial institutions and investment funds shall enter into such joinder agreements to give effect thereto as the Administrative Agent may reasonably request.

(f) Amendments. The Administrative Agent is authorized to enter into, on behalf of the Lenders, any amendment to this Credit Agreement or any other Credit Document as may be necessary to incorporate the terms of any such Revolving Facility Increase.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

To induce the Lenders to enter into this Agreement and to make the Extensions of Credit herein provided for, the Credit Parties hereby represent and warrant to the Administrative Agent and to each Lender that:

##### **Section 3.1 Financial Condition.**

(a) (i) The Consolidated financial statements of the Borrower and its Subsidiaries for the fiscal years ended 2009, 2010 and 2011 as set forth in the Borrower's Annual Report on Form 10-K for the fiscal year ended January 1, 2012, as amended, filed with the SEC, (ii) the unaudited Consolidated financial statements of the Borrower and its Subsidiaries for the year-to-date period ending on the last day of the First Quarter of 2012, together with the related Consolidated statements of income or operations, equity and cash flows for the year-to-date period ending on such date as set forth in the Borrower's Quarterly Report on Form 10-Q for the quarter ended April 1, 2012 filed with the SEC and (iii) the unaudited condensed combined pro forma balance sheet of the Borrower and its Subsidiaries as of April 1, 2012 (calculated to give effect to the Spin-Off, the Burger King Acquisition, the issuance of the Second Lien Notes and the transactions contemplated under this Agreement and the other transactions (as defined in the Offering Memorandum) as set forth in the Offering Memorandum):

(A) with respect to clauses (a)(i) and (a)(ii) above, were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein;

(B) with respect to clauses (a)(i) and (a)(ii) above, fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as of the date thereof (subject, in the case of the unaudited financial statements, to normal year-end adjustments) and results of operations for the period covered thereby; and

(C) with respect to clause (a)(iii), have been derived from the Borrower's unaudited balance sheet as of April 1, 2012 contained in the financial statements referred to in clause (a)(ii) above and the unaudited Statement of Assets Acquired and Liabilities Assumed of the BK Units as of March 31, 2012, and have been calculated based upon the assumptions and adjustments disclosed in the Offering Memorandum and such assumptions and adjustments are reasonable on the date of the Offering Memorandum and the Closing Date.

(b) The five-year projections of the Credit Parties and their Subsidiaries (prepared annually for the term of this Agreement) delivered to the Lenders on or prior to the Closing Date have been prepared in good faith based upon reasonable assumptions (i) in light of then existing conditions and (ii) of future results of operations which may or may not in fact occur and no assurance can be given that such results will be achieved.

### **Section 3.2 No Material Adverse Effect.**

Since January 1, 2012 (and, in addition, after delivery of annual audited financial statements in accordance with Section 5.1(a), from the date of the most recently delivered annual audited financial statements), there has been no development or event which has had or could reasonably be expected to have a Material Adverse Effect.

### **Section 3.3 Corporate Existence; Compliance with Law; Patriot Act Information.**

Each of the Credit Parties (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation, (b) has the requisite corporate or limited liability company power and authority and the legal right to own and operate all its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged and has taken all actions necessary to maintain all rights, privileges, licenses and franchises necessary or required in the normal conduct of its business except where the failure to take any such action could not reasonably be expected to have a Material Adverse Effect, (c) is duly qualified to conduct business and in good standing under the laws of (i) the jurisdiction of its organization or formation, (ii) the jurisdiction where its chief executive office is located and (iii) each other jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification except to the extent that the failure to so qualify or be in good standing in any such other jurisdiction could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect

and (d) is in compliance with all applicable Requirements of Law, organizational documents, government permits and government licenses except to the extent such non-compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 3.3 as of the Closing Date, or as of the last date such Schedule was required to be updated in accordance with Section 5.2, is the following information for each Credit Party: the exact legal name and any former legal names of such Credit Party in the four (4) months prior to the Closing Date, the state of incorporation or organization, the type of organization, the jurisdictions in which such Credit Party is qualified to do business, the chief executive office, the principal place of business, the business phone number, the organization identification number, the federal tax identification number and ownership information (e.g. publicly held, if private or partnership, the owners and partners of each of the Credit Parties).

**Section 3.4 Corporate Power; Authorization; Enforceable Obligations.**

Each of the Credit Parties has full corporate, partnership or limited liability company power and authority and the legal right to make, deliver and perform the Credit Documents to which it is party and has taken all necessary limited liability company, partnership or corporate action to authorize the execution, delivery and performance by it of the Credit Documents to which it is party. Each Credit Document to which it is a party has been duly executed and delivered on behalf of each Credit Party. Each Credit Document to which it is a party constitutes a legal, valid and binding obligation of each Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

**Section 3.5 No Legal Bar; No Default.**

The execution, delivery and performance by each Credit Party of the Credit Documents to which such Credit Party is a party, the borrowings thereunder and the use of the proceeds of the Revolving Loans (a) will not violate any applicable Requirement of Law of any Credit Party (except those as to which waivers or consents have been obtained), (b) will not conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws, articles of organization, operating agreement or other organization documents of the Credit Parties or any Material Contract to which such Person is a party or by which any of its properties may be bound or any material approval or material consent from any Governmental Authority relating to such Person, and (c) will not result in, or require, the creation or imposition of any Lien on any Credit Party's properties or revenues pursuant to any Requirement of Law or Contractual Obligation other than the Liens arising under or contemplated in connection with the Credit Documents or Permitted Liens. No Credit Party is in default under or with respect to any of its Contractual Obligations except where such default could not reasonably be expected to have a Material Adverse Effect.

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**Section 3.6 No Material Litigation.**

Except as set forth on Schedule 3.6, no litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or Governmental Authority is pending or, to the best knowledge of the Credit Parties, threatened by or against any Credit Party or any of its Subsidiaries or against any of its or their respective properties or revenues (a) with respect to the Credit Documents or any Extension of Credit or any of the Transactions, or (b) which, if adversely determined, could reasonably be expected to have a Material Adverse Effect. No permanent injunction, temporary restraining order or similar decree has been issued against any Credit Party or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect. Since the Closing Date there has been no occurrence, change or development with respect to the matters set forth on Schedule 3.6 which could reasonably be expected to have a Material Adverse Effect.

**Section 3.7 Investment Company Act; etc.**

No Credit Party is an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended. No Credit Party is subject to regulation limiting its ability to incur Credit Party Obligations.

**Section 3.8 Margin Regulations.**

No part of the proceeds of any Extension of Credit hereunder will be used directly or indirectly for any purpose that violates, or that would require any Lender to make any filings in accordance with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. The Credit Parties and their Subsidiaries (a) are not engaged, principally or as one of their important activities, in the business of extending credit for the purpose of “purchasing” or “carrying” “margin stock” within the respective meanings of each of such terms under Regulation U and (b) taken as a group do not own “margin stock” except as identified in the financial statements referred to in Section 3.1 or delivered pursuant to Section 5.1 and the aggregate value of all “margin stock” owned by the Credit Parties and their Subsidiaries taken as a group does not exceed 25% of the value of their assets.

**Section 3.9 ERISA.**

Except as could not reasonably be expected to have a Material Adverse Effect: (a) neither a Reportable Event nor an “accumulated funding deficiency” (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan, (b) each Plan has complied in all material respects with the applicable provisions of ERISA and the Code, (c) no termination of a Single Employer Plan has occurred resulting in any liability that has remained underfunded, (d) no Lien in favor of the PBGC or a Plan has arisen, during such five-year period and (e) the present value of all accrued benefits under each Single Employer Plan (based on

those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits and (f) neither any Credit Party nor any Commonly Controlled Entity is currently subject to any liability for a complete or partial withdrawal from a Multiemployer Plan.

### **Section 3.10 Environmental Matters.**

Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect:

(a) The facilities and properties owned, leased or operated by the Credit Parties or any of their Subsidiaries (the “Properties”) do not contain any Materials of Environmental Concern in amounts or concentrations which (i) constitute a violation of, or (ii) could give rise to liability on behalf of any Credit Party under, any Environmental Law.

(b) The Properties and all operations of the Credit Parties and/or their Subsidiaries at the Properties are in compliance, and have in the last five years been in compliance, with all applicable Environmental Laws, and there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the business operated by the Credit Parties or any of their Subsidiaries (the “Business”).

(c) Neither the Credit Parties nor their Subsidiaries have received any written or actual notice of violation, alleged violation, non-compliance, liability or potential liability on behalf of any Credit Party with respect to environmental matters or Environmental Laws regarding any of the Properties or the Business, nor do the Credit Parties or their Subsidiaries have knowledge or reason to believe that any such notice will be received or is being threatened.

(d) Materials of Environmental Concern have not been transported or disposed of from the Properties in violation of, or in a manner or to a location that could give rise to liability on behalf of any Credit Party under any Environmental Law, and no Materials of Environmental Concern have been generated, treated, stored or disposed of at, on or under any of the Properties in violation of, or in a manner that could give rise to liability on behalf of any Credit Party under, any applicable Environmental Law.

(e) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Credit Parties and their Subsidiaries, threatened, under any Environmental Law to which any Credit Party or any Subsidiary is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business.

(f) There has been no release or threat of release of Materials of Environmental Concern at or from the Properties, or arising from or related to the operations of any Credit Party or any Subsidiary in connection with the Properties or otherwise in connection with the Business, in violation of or in amounts or in a manner that could give rise to liability on behalf of any Credit Party under Environmental Laws.

**Section 3.11 Use of Proceeds.**

The proceeds of the Extensions of Credit shall be used by the Borrower to (a) issue Letters of Credit and (b) to finance ongoing working capital and other general corporate purposes of the Credit Parties and their Subsidiaries.

**Section 3.12 Subsidiaries; Joint Ventures; Partnerships.**

Set forth on Schedule 3.12 is a complete and accurate list of all Subsidiaries, joint ventures and partnerships of the Credit Parties as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 5.2. Information on the attached Schedule includes the following: (a) the number of shares of each class of Equity Interests of each Subsidiary outstanding and (b) the number and percentage of outstanding shares of each class of Equity Interests owned by the Credit Parties and their Subsidiaries. The outstanding Equity Interests of all such Subsidiaries are validly issued, fully paid and non-assessable and are owned free and clear of all Liens (other than the Burger King Rights and those arising under or contemplated in connection with the Credit Documents). There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Equity Interests of any Credit Party or any Subsidiary thereof, except as contemplated in connection with the Credit Documents.

**Section 3.13 Ownership.**

Each of the Credit Parties and its Subsidiaries is the owner of, and has good and marketable title to or a valid leasehold interest in, all of its respective assets, which, together with assets leased or licensed by the Credit Parties and their Subsidiaries, represents all assets in the aggregate material to the conduct of the business of the Credit Parties and their Subsidiaries. Each Credit Party and its Subsidiaries enjoys peaceful and undisturbed possession under all of its leases and all such leases are valid and subsisting and in full force and effect except as could not reasonably be expected to have a Material Adverse Effect.

**Section 3.14 Consent; Governmental Authorizations.**

No approval, consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with acceptance of Extensions of Credit by the Borrower or the making of the Guaranty hereunder or with the execution, delivery or performance of any Credit Document by the Credit Parties (other than those which have been obtained) or with the validity or enforceability of any Credit Document against the Credit Parties (except such filings as are necessary in connection with the perfection of the Liens created by such Credit Documents).

### **Section 3.15 Taxes.**

Each of the Credit Parties and its Subsidiaries has filed, or caused to be filed, all federal income tax returns and all other material tax returns (federal, state, local and foreign) required to be filed and paid (a) all amounts of taxes shown thereon to be due (including interest and penalties) and (b) all other material taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes (i) that are not yet delinquent or (ii) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP. None of the Credit Parties or their Subsidiaries has received written notice as of the Closing Date of any material tax assessments against it or any of its Subsidiaries.

### **Section 3.16 Collateral Representations.**

(a) **Intellectual Property.** Set forth on Schedule 3.16(a), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 5.2, is a list of all registered or issued Intellectual Property (including all applications for registration and issuance) owned by each of the Credit Parties or that each of the Credit Parties has the right to (including the name/title, current owner, registration or application number, and registration or application date and such other information as reasonably requested by the Administrative Agent), other than the Intellectual Property rights under the Franchise Agreements.

(b) **Documents, Instrument, and Tangible Chattel Paper.** Set forth on Schedule 3.16(b), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 5.2, is a description of all Documents (as defined in the UCC), Instruments (as defined in the UCC), and Tangible Chattel Paper (as defined in the UCC) of the Credit Parties (including the Credit Party owning such Document, Instrument and Tangible Chattel Paper and such other information as reasonably requested by the Administrative Agent), in each case to the extent with a value in excess of \$100,000.

(c) **Deposit Accounts, Electronic Chattel Paper, Letter-of-Credit Rights, Securities Accounts and Uncertificated Investment Property.** Set forth on Schedule 3.16(c), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 5.2, is a description of all Deposit Accounts (as defined in the UCC), Electronic Chattel Paper (as defined in the UCC), Letter-of-Credit Rights (as defined in the UCC), Securities Accounts (as defined in the UCC) and uncertificated Investment Property (as defined in the UCC) of the Credit Parties, including the name of (i) the applicable Credit Party, (ii) in the case of a Deposit Account, the depository institution and average amount held in such Deposit Account, (iii) in the case of Electronic Chattel Paper, the account debtor, (iv) in the case of Letter-of-Credit Rights, the issuer or nominated person, as applicable, and (v) in the case of a

Securities Account or other uncertificated Investment Property, the Securities Intermediary or issuer and the average amount held in such Securities Account, as applicable.

(d) Commercial Tort Claims. Set forth on Schedule 3.16(d), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 5.2, is a description of all Commercial Tort Claims (as defined in the UCC) of the Credit Parties (detailing such Commercial Tort Claim in such detail as reasonably requested by the Administrative Agent).

(e) Pledged Equity Interests. Set forth on Schedule 3.16(e), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 5.2, is a list of (i) 100% (or, if less, the full amount owned by such Credit Party) of the issued and outstanding Equity Interests owned by such Credit Party of each Domestic Subsidiary, (ii) 65% (or, if less, the full amount owned by such Credit Party) of each class of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% (or, if less, the full amount owned by such Pledgor) of each class of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) owned by such Credit Party of each first-tier Foreign Subsidiary and (iii) all other Equity Interests required to be pledged to the Administrative Agent pursuant to the Security Documents.

(f) Properties. Set forth on Schedule 3.16(f)(i), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 5.2, is a list of all Mortgaged Properties (including the owner of such Mortgaged Property). Set forth on Schedule 3.16(f)(ii) is a list of (i) each headquarter location of the Credit Parties (and an indication if such location is leased or owned) and (ii) each other location where any significant administrative functions are performed (and an indication if such location is leased or owned).

### **Section 3.17 Solvency.**

The Credit Parties taken as a whole are solvent and are able to pay their debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, and the fair saleable value of the Credit Parties assets, taken as a whole and measured on a going concern basis, exceeds all probable liabilities, including those to be incurred pursuant to this Agreement. The Credit Parties taken as a whole do not have unreasonably small capital in relation to the business in which they are or propose to be engaged. The Credit Parties taken as a whole have not incurred, or believe that they will incur debts beyond its ability to pay such debts as they become due. In executing the Credit Documents and consummating the Transactions, none of the Credit Parties intends to hinder, delay or defraud either present or future creditors or other Persons to which one or more of the Credit Parties is or will become indebted. On the Closing Date, the foregoing representations and warranties shall be made both before and after giving effect to the Transactions.

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**Section 3.18 Compliance with FCPA.**

Each of the Credit Parties and their Subsidiaries is in compliance with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq.*, and any foreign counterpart thereto. None of the Credit Parties or their Subsidiaries has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to such Credit Party or its Subsidiary or to any other Person, in violation of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq.*

**Section 3.19 Reserved.****Section 3.20 Brokers' Fees.**

None of the Credit Parties or their Subsidiaries has any obligation to any Person in respect of any finder's, broker's, investment banking or other similar fee in connection with any of the Transactions other than the closing and other fees payable pursuant to this Agreement and as set forth in the Fee Letter.

**Section 3.21 Labor Matters.**

Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (a) there are no collective bargaining agreements or Multiemployer Plans covering the employees of the Credit Parties or any of their Subsidiaries as of the Closing Date and none of the Credit Parties or their Subsidiaries (i) has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years or (ii) has knowledge of any potential or pending strike, walkout or work stoppage, (b) no unfair labor practice complaint is pending against any Credit Party or any of its Subsidiaries and (c) there are no strikes, walkouts, work stoppages or other material labor difficulty pending or threatened against any Credit Party.

**Section 3.22 Accuracy and Completeness of Information.**

No representation or warranty made by the Borrower or any other Credit Party in any Credit Document or in any document, instrument or other writing furnished to the Lenders by or on behalf of any Credit Party in connection with the transactions contemplated in any Credit Document does or will contain any untrue material statement of fact or will omit to state any such fact (of which any executive officer of any Credit Party has knowledge) necessary to make the representations, warranties and other statements contained herein or in such other document, instrument or writing not misleading in any material respect when made.

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### **Section 3.23 Material Contracts.**

Schedule 3.23 sets forth a complete and accurate list of all Material Contracts of the Credit Parties and their Subsidiaries in effect as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 5.2. Each Material Contract is, and after giving effect to the Transactions will be, in full force and effect in accordance with the terms thereof.

### **Section 3.24 Insurance.**

The insurance coverage of the Credit Parties and their Subsidiaries is outlined as to carrier, policy number, expiration date, type and amount on Schedule 3.24 as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 5.2 and such insurance coverage complies in all material respects with the requirements set forth in Section 5.5(b).

### **Section 3.25 Security Documents.**

The Security Documents create valid and enforceable security interests in, and Liens on, the Collateral purported to be covered thereby. Except as set forth in the Security Documents, such security interests and Liens are currently (or will be, upon (a) the filing of appropriate financing statements with the Secretary of State of the state of incorporation or organization for each Credit Party, the filing of appropriate assignments or notices with the United States Patent and Trademark Office and the United States Copyright Office, and the recordation of the Mortgage Instruments, in each case in favor of the Administrative Agent, on behalf of the Lenders, and (b) the Administrative Agent obtaining control or possession over those items of Collateral in which a security interest is perfected through control or possession) perfected security interests and Liens in favor of the Administrative Agent, for the benefit of the Secured Parties, prior to all other Liens other than Permitted Liens.

### **Section 3.26 Classification of Senior Indebtedness.**

The Credit Party Obligations constitute “Senior Indebtedness”, “Designated Senior Indebtedness” or any similar designation under and as defined in any agreement governing any Subordinated Debt and the subordination provisions set forth in each such agreement are legally valid and enforceable against the parties thereto.

### **Section 3.27 Anti-Terrorism Laws.**

Neither any Credit Party nor any of its Subsidiaries is an “enemy” or an “ally of the enemy” within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 *et seq.*) (the “Trading with the Enemy Act”), as amended. Neither any Credit Party nor any of its Subsidiaries is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. None of the Credit Parties (i) is a blocked

person described in Section 1 of the Anti-Terrorism Order or (ii) to the best of its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

**Section 3.28 Compliance with OFAC Rules and Regulations.**

(a) None of the Credit Parties or their Subsidiaries or their respective Affiliates is in violation of and shall not violate any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at <http://www.ustreas.gov/offices/enforcement/ofac/> or as otherwise published from time to time.

(b) None of the Credit Parties or their Subsidiaries or their respective Affiliates (i) is a Sanctioned Person or a Sanctioned Entity, (ii) has a more than 10% of its assets located in Sanctioned Entities, or (iii) derives more than 10% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of any Revolving Loan will be used nor have any been used to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Entity.

**Section 3.29 Authorized Officer.**

Set forth on Schedule 3.29 are Responsible Officers that are permitted to sign Credit Documents on behalf of the Credit Parties, holding the offices indicated next to their respective names, as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 5.2. Such Authorized Officers are the duly elected and qualified officers of such Credit Party and are duly authorized to execute and deliver, on behalf of the respective Credit Party, the Credit Agreement, the Revolving Loan Notes and the other Credit Documents.

**Section 3.30 Regulation H.**

No Mortgaged Property is a Flood Hazard Property unless the Administrative Agent shall have received the following: (a) the applicable Credit Party's written acknowledgment of receipt of written notification from the Administrative Agent (i) as to the fact that such Mortgaged Property is a Flood Hazard Property and (ii) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (b) copies of insurance policies or certificates of insurance of the applicable Credit Party evidencing flood insurance reasonably satisfactory to the Administrative Agent and naming the Administrative Agent as loss payee on behalf of the Lenders.

**Section 3.31 Franchise Agreements.** Schedule 3.31 sets forth as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Section 5.2, a true, correct and complete list of all Franchise Agreements currently in effect with the (a) street address of each Restaurant, (b) store number of each Restaurant and (c) expiration date of each Franchise Agreement. Each Franchise Agreement is, and after giving effect to the

consummation of the transactions contemplated by the Credit Documents will be, in full force and effect in accordance with the terms thereof, except where the failure of any Franchise Agreements to be in full force and effect, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. No Credit Party (nor, to the knowledge of the Borrower, any other party thereto) is in breach of or in default under any Franchise Agreement in any respect, except for any breaches or defaults that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

## ARTICLE IV

### CONDITIONS PRECEDENT

#### Section 4.1 Conditions to Closing Date.

This Agreement shall become effective upon, and the obligation of each Lender to make the initial Extensions of Credit on the Closing Date is subject to, the satisfaction of the following conditions precedent:

(a) Execution of Credit Agreement and Credit Documents. The Administrative Agent shall have received (i) counterparts of this Agreement, executed by a duly authorized officer of each party hereto, (ii) for the account of each Lender requesting a promissory note, a duly executed Revolving Loan Note, (iii) counterparts of the Security Agreement conforming to the requirements of this Agreement and executed by duly authorized officers of the Credit Parties or other Person, as applicable and (iv) counterparts of any other Credit Document, executed by the duly authorized officers of the parties thereto.

(b) Authority Documents. The Administrative Agent shall have received the following:

(i) Articles of Incorporation/Charter Documents. Original certified articles of incorporation or other charter documents, as applicable, of each Credit Party certified (A) by an officer of such Credit Party (pursuant to an officer's certificate in substantially the form of Exhibit 4.1(b) attached hereto) as of the Closing Date to be true and correct and in force and effect as of such date, and (B) to be true and complete as of a recent date by the appropriate Governmental Authority of the state of its incorporation or organization, as applicable.

(ii) Resolutions. Copies of resolutions of the board of directors or comparable managing body of each Credit Party approving and adopting the Credit Documents, the Transactions and authorizing execution and delivery thereof, certified by an officer of such Credit Party (pursuant to an officer's certificate in substantially the form of Exhibit 4.1(b) attached hereto) as of the Closing Date to be true and correct and in force and effect as of such date.

(iii) Bylaws/Operating Agreement. A copy of the bylaws or comparable operating agreement of each Credit Party certified by an officer of such Credit Party (pursuant to an officer's certificate in substantially the form of Exhibit 4.1(b) attached hereto) as of the Closing Date to be true and correct and in force and effect as of such date.

(iv) Good Standing. Original certificates of good standing, existence or its equivalent with respect to each Credit Party certified as of a recent date by the appropriate Governmental Authorities of the state of incorporation or organization and each other state in which the failure to so qualify and be in good standing could reasonably be expected to have a Material Adverse Effect.

(v) Incumbency. An incumbency certificate of each Authorized Officer of each Credit Party certified by an officer (pursuant to an officer's certificate in substantially the form of Exhibit 4.1(b) attached hereto) to be true and correct as of the Closing Date.

(c) Legal Opinion of Counsel. The Administrative Agent shall have received an opinion or opinions of counsel for the Credit Parties (including an opinion of the general counsel of the Borrower), dated the Closing Date and addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent (which shall include, without limitation, opinions with respect to the due organization and valid existence of each Credit Party, opinions as to perfection of certain of the Liens granted to the Administrative Agent pursuant to the Security Documents and opinions as to the non-contravention of the Credit Parties' organizational documents and Material Contracts).

(d) Personal Property Collateral. The Administrative Agent shall have received, in form and substance reasonably satisfactory to the Administrative Agent:

(i) (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Credit Party and each jurisdiction where any Collateral is located or where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens and (B) tax lien and judgment searches;

(ii) completed UCC financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;

(iii) stock or membership certificates, if any, evidencing the Equity Interests pledged to the Administrative Agent pursuant to the Security Agreement and undated stock or transfer powers duly executed in blank;

(iii) duly executed consents as are necessary, in the Administrative Agent's sole discretion, to perfect the Lenders' security interest in the Collateral;

(v) to the extent required to be delivered pursuant to the terms of the Security Documents, all instruments, documents and chattel paper in the possession of any of the Credit Parties, together with allonges or assignments as may be necessary or appropriate to perfect the Administrative Agent's and the Lenders' security interest in the Collateral;

(e) Reserved.

(f) Liability, Casualty, Property and Business Interruption Insurance. The Administrative Agent shall have received copies of insurance policies or certificates and endorsements of insurance evidencing liability, casualty, property and business interruption insurance meeting the requirements set forth herein or in the Security Documents. The Administrative Agent shall be named (i) as lenders' loss payee, as its interest may appear, with respect to any such insurance providing coverage in respect of any Collateral and (ii) as additional insured, as its interest may appear, with respect to any such insurance providing liability coverage, and the Credit Parties will use their commercially reasonable efforts to have each provider of any such insurance agree, by endorsement upon the policy or policies issued by it or by independent instruments to be furnished to the Administrative Agent, that it will give the Administrative Agent thirty (30) days prior written notice before any such policy or policies shall be altered or cancelled.

(g) Solvency Certificate. The Administrative Agent shall have received an officer's certificate prepared by the chief financial officer or other Authorized Officer approved by the Administrative Agent of the Borrower as to the financial condition, solvency and related matters of the Credit Parties and their Subsidiaries, after giving effect to the Transactions and the initial borrowings under the Credit Documents, in substantially the form of Exhibit 4.1(g) hereto.

(h) Account Designation Notice. The Administrative Agent shall have received the executed Account Designation Notice in the form of Exhibit 1.1(a) hereto.

(i) Consents. The Administrative Agent shall have received evidence that all boards of directors, governmental, shareholder and material third party consents and approvals necessary in connection with the Transactions have been obtained and all applicable waiting periods have expired without any action being taken by any authority that could restrain, prevent or impose any material adverse conditions on such transactions or that could seek or threaten any of the foregoing.

(j) Existing Indebtedness of the Credit Parties. All of the existing Indebtedness for borrowed money of the Credit Parties and their Subsidiaries (other than Indebtedness permitted to exist pursuant to Section 6.1 but including Indebtedness under the Existing Credit Agreement) shall be repaid in full (together with accrued and unpaid interest thereon and obligations with respect thereto) and all security interests related thereto shall be terminated on or prior to the Closing Date.

(k) Financial Statements. The Administrative Agent and the Lenders shall have received copies of the financial statements referred to in Section 3.1, each in form and substance reasonably satisfactory to each of them.

(l) Financial Condition Certificate. The Administrative Agent shall have received a certificate or certificates executed by an Authorized Officer of the Borrower as of the Closing Date, substantially in the form of Exhibit 4.1(m), stating that (i) except as set forth on Schedule 3.6, there does not exist any pending or ongoing, action, suit, investigation, litigation or proceeding in any court or before any other Governmental Authority (A) affecting this Agreement or the other Credit Documents, that has not been settled, dismissed, vacated, discharged or terminated prior to the Closing Date, (B) that purports to affect any Credit Party or any of its Subsidiaries, or any Transaction, which action, suit, investigation, litigation or proceeding which, if adversely determined, could reasonably be expected to have a Material Adverse Effect, that has not been settled, dismissed, vacated, discharged or terminated prior to the Closing Date or (C) has not been disclosed in a report to the U.S. Securities and Exchange Commission, (ii) immediately after giving effect to this Agreement, the other Credit Documents, and all the Transactions contemplated to occur on such date, (A) no Default or Event of Default exists, (B) all representations and warranties contained herein and in the other Credit Documents are true and correct in all material respects and (C) the Credit Parties are in compliance with Section 4.1(m) (as evidenced through detailed calculations of such financial covenants on a schedule to such certificate) as of April 1, 2012, and (iii) each of the other conditions precedent in Section 4.1 have been satisfied, except to the extent the satisfaction of any such condition is subject to the judgment or discretion of the Administrative Agent or any Lender.

(m) Closing Date Financial Covenants. The Administrative Agent shall have received evidence that as of the Closing Date (i) Consolidated EBITDA is not less than \$33,035,000 and (ii) the Adjusted Leverage Ratio is not greater than 6.80 to 1.00, in each case, calculated on a Pro Forma Basis (including adjustments reasonably acceptable to the Administrative Agent) after giving effect to the Transactions, the Spin-Off and the Burger King Acquisition and the other Transactions (as defined in the Offering Memorandum) for the twelve-month period ending as of April 1, 2012, such calculations to be reasonably satisfactory to the Administrative Agent.

(n) Franchise Agreements. The Administrative Agent shall have received (i) a certificate executed by an Authorized Officer of the Borrower as of the Closing Date, in form and substance satisfactory to the Administrative Agent stating that the Franchise Agreements listed on Schedule 3.31 are in full force and effect as of the Closing Date and (ii) forms of the Franchise Agreements, certified by an Authorized Officer of the Borrower to be generally representative in all material respects of the Franchise Agreements as a whole.

(o) Structure. The pro forma capital, ownership and management structure and shareholding arrangement of the Borrower and its Subsidiaries (and all agreements relating thereto) shall be reasonably satisfactory to the Administrative Agent.

(p) Second Lien Notes. The Borrower shall have received gross proceeds from the issuance of the Second Lien Notes on the Closing Date of \$150,000,000. The Administrative Agent shall have received a certified copy of the Second Lien Note Indenture and other related documents (including, without limitation, the Intercreditor Agreement), each to be in form and substance reasonably satisfactory to the Administrative Agent.

(q) Revolver Cash Collateral Account. The Borrower or any other Credit Party shall have established the Revolver Cash Collateral Account with Wells Fargo.

(r) Fees and Expenses. The Administrative Agent and the Lenders shall have received all fees and expenses, if any, owing pursuant to the Fee Letter and Section 2.5.

(s) Additional Matters. All other documents and legal matters in connection with the Transactions shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel.

Without limiting the generality of the provisions of Section 8.4, for purposes of determining compliance with the conditions specified in this Section 4.1, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

#### **Section 4.2 Conditions to All Extensions of Credit.**

The obligation of each Lender to make any Extension of Credit hereunder is subject to the satisfaction of the following conditions precedent on the date of making such Extension of Credit:

(a) Representations and Warranties. The representations and warranties made by the Credit Parties herein, in the other Credit Documents and which are contained in any certificate furnished at any time under or in connection herewith shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects, in each case on and as of the date of such Extension of Credit as if made on and as of such date except for any representation or warranty made as of an earlier date, which representation and warranty shall remain true and correct as of such earlier date.

(b) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the Extension of Credit to be made on such date unless such Default or Event of Default shall have been waived in accordance with this Agreement.

(c) Compliance with Commitments. Immediately after giving effect to the making of any such Extension of Credit (and the application of the proceeds thereof), (i) the sum of the aggregate principal amount of outstanding Revolving Loans plus outstanding LOC Obligations shall not exceed the Revolving Committed Amount then in effect, and (ii) the outstanding LOC Obligations shall not exceed the LOC Committed Amount.

(d) Additional Conditions to Revolving Loans. If a Revolving Loan is requested, all conditions set forth in Section 2.1 shall have been satisfied.

(e) Additional Conditions to Letters of Credit. If the issuance of a Letter of Credit is requested, (i) all conditions set forth in Section 2.3 shall have been satisfied and (ii) there shall exist no Lender that is a Defaulting Lender unless the Issuing Lender has entered into satisfactory arrangements with the Borrower or such Defaulting Lender to eliminate the Issuing Lender's risk with respect to such Defaulting Lender's LOC Obligations.

(f) Incremental Facility. If an Incremental Facility is requested, all conditions set forth in Section 2.22 shall have been satisfied.

Each request for an Extension of Credit and each acceptance by the Borrower of any such Extension of Credit shall be deemed to constitute representations and warranties by the Credit Parties as of the date of such Extension of Credit that the conditions set forth above in paragraphs (a) through (f), as applicable, have been satisfied.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Each of the Credit Parties hereby covenants and agrees that on the Closing Date, and thereafter (a) for so long as this Agreement is in effect, (b) until the Commitments have terminated, and (c) the Credit Party Obligations and all other amounts owing to the Administrative Agent or any Lender hereunder are paid in full in cash, such Credit Party shall, and shall cause each of their Subsidiaries, to:

#### **Section 5.1 Financial Statements.**

Furnish to the Administrative Agent and each of the Lenders:

(a) Annual Financial Statements. As soon as available and in any event no later than ninety (90) days after the end of each fiscal year of the Borrower (beginning with fiscal year 2012), a copy of the Consolidated balance sheet of the Borrower and its

Subsidiaries as of the end of such fiscal year and the related Consolidated statements of income and retained earnings and of cash flows of the Borrower and its Subsidiaries for such year, which shall be audited by a firm of independent certified public accountants of nationally recognized standing reasonably acceptable to the Administrative Agent (and the Administrative Agent hereby acknowledges that Deloitte LLP is acceptable to it), setting forth in each case in comparative form the figures for the previous year, reported on without a “going concern” or like qualification or exception, or qualification indicating that the scope of the audit was inadequate to permit such independent certified public accountants to certify such financial statements without such qualification;

(b) Quarterly Financial Statements. As soon as available and in any event no later than forty-five (45) days after the end of each fiscal quarter of the Borrower (including the Second Quarter 2012), a copy of the Consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such period and related Consolidated statements of income and retained earnings and, other than with respect to the Fourth Quarter, of cash flows for the Borrower and its Subsidiaries for such quarterly period and for the portion of the fiscal year ending with such period, in each case setting forth in comparative form Consolidated figures for the corresponding period or periods of the preceding fiscal year (subject to normal recurring year-end audit adjustments); and

(c) Annual Operating Budget and Cash Flow. As soon as available, but in any event no later than sixty (60) days after the beginning of each fiscal year (including fiscal year 2013), a copy of the detailed annual operating budget or plan including cash flow projections of the Borrower and its Subsidiaries for such fiscal year prepared on a quarterly basis, in form and detail reasonably acceptable to the Administrative Agent and the Lenders, together with a summary of the material assumptions made in the preparation of such annual budget or plan;

all such financial statements furnished pursuant to subsections (a) and (b) above shall be complete and correct in all material respects (subject, in the case of interim statements, to normal recurring year-end audit adjustments and except that such statements are condensed and exclude detailed footnote disclosures) and to be prepared in reasonable detail and, in the case of the annual and quarterly financial statements provided in accordance with subsections (a) and (b) above, in accordance in all material respects with GAAP applied consistently throughout the periods reflected therein and further accompanied by a description of, and an estimation of the effect on the financial statements on account of, a change, if any, in GAAP as provided in Section 1.3(b).

Notwithstanding the foregoing, financial statements and reports required to be delivered pursuant to the foregoing provisions of this Section may be delivered electronically and if so, shall be deemed to have been delivered on the date on which the Administrative Agent receives such reports from the Borrower through electronic mail; provided that, upon the Administrative Agent’s request, the Borrower shall provide paper copies of any documents required hereby to the Administrative Agent.

## Section 5.2 Certificates; Other Information.

Furnish to the Administrative Agent and each of the Lenders:

(a) Reserved.

(b) Officer's Certificate. Concurrently with the delivery of the financial statements referred to in Sections 5.1(a) and 5.1(b) (other than with respect to the Fourth Quarter financial statements) above, a certificate of an Authorized Officer substantially in the form of Exhibit 5.2(b) stating that (i) such financial statements present fairly in all material respects the financial position of the Credit Parties and their Subsidiaries for the periods indicated in conformity with GAAP applied on a consistent basis, (ii) each of the Credit Parties during such period observed or performed in all material respects all of its covenants and other agreements, and satisfied in all material respects every condition, contained in this Agreement to be observed, performed or satisfied by it, and (iii) such Authorized Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and such certificate shall include, for all such periods both before and after the Cash Collateral Release Date, the calculations of the financial covenants set forth in Section 5.9 in reasonable detail.

(c) Updated Schedules. Concurrently with or prior to the delivery of the financial statements referred to in Sections 5.1(a) and 5.1(b) above, (i) an updated copy of Schedule 3.3 and Schedule 3.12 if the Credit Parties or any of their Subsidiaries has formed or acquired a new Subsidiary since the Closing Date or since such Schedule was last updated, as applicable, (ii) an updated copy of Schedule 3.16(a) if the Credit Parties have registered, applied for registration of, acquired or otherwise obtained ownership of any new Intellectual Property since the Closing Date or since such Schedule was last updated, as applicable, (iii) an updated copy of Schedule 3.16(b) if the Credit Parties have obtained any Documents (as defined in the UCC), Instruments (as defined in the UCC) or Tangible Chattel Paper (as defined in the UCC) since the Closing Date or since such Schedule was last updated, as applicable, (iv) an updated copy of Schedule 3.16(c) if the Credit Parties maintain any Deposit Accounts (as defined in the UCC), Electronic Chattel Paper (as defined in the UCC), Letter-of-Credit Rights (as defined in the UCC), Securities Accounts (as defined in the UCC) or uncertificated Investment Property (as defined in the UCC) to the extent not otherwise set forth on such Schedule as of the Closing Date or since such Schedule was last updated, as applicable, (v) an updated copy of Schedule 3.16(d) if the Credit Parties have any Commercial Tort Claims not otherwise set forth on such Schedule as of the Closing Date or since such Schedule was last updated, as applicable, (vi) an updated copy of Schedule 3.16(e) to the extent required to be updated to make the representation in Section 3.16(e) true and correct, (vii) an updated copy of Schedule 3.16(f)(i) to the extent any Credit Party is obligated to provide a mortgage or deed of trust on any Property in accordance with Section 5.12, (viii) an updated copy of Schedule 3.16(f)(ii) to the extent any Credit Party has a (1) headquarter location and (2) location where any significant administrative functions are performed (and an indication whether such location is leased or owned), to the extent not otherwise set forth on such Schedule as of the Closing Date or since such Schedule was last updated, as

applicable, (ix) an updated copy of Schedule 3.23 if any new Material Contract has been entered into or any Material Contract has been terminated since the Closing Date or since such Schedule was last updated, as applicable, together with a copy of each new Material Contract, (x) an updated copy of Schedule 3.24 if the Credit Parties or any of their Subsidiaries has altered or acquired any insurance policies since the Closing Date or since such Schedule was last updated, and (xi) an updated copy of Schedule 3.31 to the extent required to be updated to make the representation in Section 3.31 true and correct.

(d) Reports; SEC Filings; Regulatory Reports; Press Releases; Etc. Promptly upon their becoming available, (i) copies of all reports (other than those provided pursuant to Section 5.1 and those which are of a promotional nature) and other financial information which any Credit Party sends to its shareholders (other than Burger King Corporation), (ii) copies of all reports and all registration statements and prospectuses, if any, which any Credit Party may make to, or file with, the SEC (or any successor or analogous Governmental Authority) or any securities exchange or other private regulatory authority, (iii) all material regulatory reports and (iv) all press releases and other statements made available by any of the Credit Parties to the public concerning material developments in the business of any of the Credit Parties.

(e) Calculations. Within ninety (90) days after the end of each fiscal year of the Borrower, a certificate containing information including the amount of all Restricted Payments, Investments (including Permitted Acquisitions and Permitted Construction Transactions), Asset Dispositions and Debt Issuances that were made during the prior fiscal year and amounts received in connection with any Extraordinary Receipt during the prior fiscal year.

(f) Changes in Corporate Structure. Within ten days prior to any merger, consolidation, dissolution or other change in corporate structure of any Credit Party or any of its subsidiaries permitted pursuant to the terms hereof, provide notice of such change in corporate structure to the Administrative Agent.

(g) General Information. Promptly, such additional financial and other information as the Administrative Agent, on behalf of any Lender, may from time to time reasonably request.

### **Section 5.3 Payment of Taxes and Other Obligations.**

Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, subject, where applicable, to specified grace periods, (a) all of its material taxes (Federal, state, local and any other taxes) and (b) all of its other obligations and liabilities of whatever nature in accordance with industry practice to the extent failure to pay could reasonably be expected to have a Material Adverse Effect and (c) any additional costs that are imposed as a result of any failure to so pay, discharge or otherwise satisfy such taxes, obligations and liabilities, except when the amount or validity of any such taxes, obligations and liabilities is currently being contested in good faith by appropriate proceedings and reserves, if applicable, in conformity with GAAP with respect thereto have been provided on the books of the Credit Parties.

#### **Section 5.4 Conduct of Business and Maintenance of Existence.**

Except as expressly permitted under Section 6.4, continue to engage in business of the same general type as now conducted by it on the Closing Date and preserve, renew and keep in full force and effect its corporate or other formative existence and good standing, take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business and to maintain its goodwill and comply in all material respects with Requirements of Law.

#### **Section 5.5 Maintenance of Property; Insurance.**

Maintain with financially sound and reputable insurance companies liability, casualty, property and business interruption insurance (including, without limitation, insurance with respect to its tangible Collateral) in at least such amounts and against at least such risks as are usually insured against in the same general area by companies engaged in the same or a similar business; and furnish to the Administrative Agent, upon the request of the Administrative Agent, full information as to the insurance carried. To the extent permitted under applicable laws, the Administrative Agent shall be named (i) as lenders' loss payee, as its interest may appear with respect to any property insurance, and (ii) as additional insured, as its interest may appear, with respect to any such liability insurance, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments to be furnished to the Administrative Agent, that it will give the Administrative Agent thirty (30) days prior written notice before any such policy or policies shall be altered or canceled, and such policies shall provide that no act or default of the Credit Parties or any of their Subsidiaries or any other Person shall affect the rights of the Administrative Agent or the Lenders under such policy or policies.

#### **Section 5.6 Maintenance of Books and Records.**

Keep proper books, records and accounts which permit financial statements to be prepared in accordance with GAAP.

#### **Section 5.7 Notices.**

Give notice in writing to the Administrative Agent (which shall promptly transmit such notice to each Lender):

- (a) promptly, but in any event within two (2) Business Days after any Credit Party knows thereof, the occurrence of any Default or Event of Default;
- (b) promptly after becoming aware of any default or event of default under any Contractual Obligation of any Credit Party or any of its Subsidiaries which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or involve a monetary claim in excess of \$2,500,000;

(c) promptly after becoming aware of any litigation, or any investigation or proceeding known or threatened to any Credit Party (i) affecting any Credit Party or any of its Subsidiaries which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or involve a monetary claim in excess of \$5,000,000 or involving injunctions or requesting injunctive relief by or against any Credit Party or any Subsidiary of any Credit Party, (ii) affecting or with respect to this Agreement, any other Credit Document or any security interest or Lien created thereunder, (iii) involving an environmental claim or potential liability under Environmental Laws which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (iv) by any Governmental Authority relating to any Credit Party or any Subsidiary thereof and alleging fraud, deception or willful misconduct by such Person;

(d) of any labor controversy that has resulted in, or threatens to result in, a strike or other work action against any Credit Party which could reasonably be expected to have a Material Adverse Effect;

(e) of any attachment, judgment, lien, levy or order exceeding \$5,000,000 that may be assessed against or threatened against any Credit Party other than Permitted Liens;

(f) as soon as possible and in any event within thirty (30) days after any Credit Party knows or has reason to know thereof: (i) the occurrence or expected occurrence of any Reportable Event with respect to any Plan, a failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC (other than a Permitted Lien) or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or any Credit Party, any Commonly Controlled Entity or any Multiemployer Plan, with respect to the withdrawal from, or the terminating, Reorganization or Insolvency of, any Plan, in each case which could reasonably be expected to have a Material Adverse Effect;

(g) promptly, any notice of any violation received by any Credit Party from any Governmental Authority including, without limitation, any notice of violation of Environmental Laws which could reasonably be expected to have a Material Adverse Effect; and

(h) promptly, any other development or event which could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of an Authorized Officer setting forth details of the occurrence referred to therein and stating what action the Credit Parties propose to take with respect thereto. In the case of any notice of a Default or Event of Default, the Borrower shall specify that such notice is a Default or Event of Default notice on the face thereof.

### **Section 5.8 Environmental Laws.**

(a) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, comply with all applicable Environmental Laws and obtain and comply with and maintain any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws;

(b) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws except to the extent that the same are being contested in good faith by appropriate proceedings; and

(c) Defend, indemnify and hold harmless the Administrative Agent and the Lenders, and their respective employees, agents, officers and directors and affiliates, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way relating to the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Credit Parties or any of their Subsidiaries or the Properties, or any orders, requirements or demands of Governmental Authorities related thereto, including, without limitation, reasonable attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent that any of the foregoing arise out of the gross negligence or willful misconduct of the party seeking indemnification therefor. The agreements in this paragraph shall survive repayment of the Credit Party Obligations and all other amounts payable hereunder and termination of the Commitments and the Credit Documents.

### **Section 5.9 Financial Covenants.**

Beginning with the first fiscal quarter ending on the date immediately following the Cash Collateral Release Date and for each fiscal quarter thereafter, comply with the following financial covenants:

(a) Adjusted Leverage Ratio. The Adjusted Leverage Ratio, calculated as of the last day of each fiscal quarter occurring during the periods set forth below shall be less than or equal to the following:

<u>Period</u>	<u>Ratio</u>
Closing Date through and including the Fourth Quarter of 2013	6.00 to 1.00
First Quarter of 2014 through and including the Fourth Quarter of 2014	5.50 to 1.00
First Quarter of 2015 and thereafter	5.00 to 1.00

(b) Fixed Charge Coverage Ratio. The Fixed Charge Coverage Ratio, calculated as of the last day of each fiscal quarter, shall be greater than or equal to (i) 1.20 to 1.00 from the Closing Date through and including the Second Quarter of 2013 and (ii) 1.30 to 1.00 from the Third Quarter of 2013 and thereafter.

**Section 5.10 Additional Guarantors.**

The Credit Parties will cause each of their Domestic Subsidiaries, whether newly formed, after acquired or otherwise existing to promptly (and in any event within thirty (30) days after such Subsidiary is formed or acquired (or such longer period of time as agreed to by the Administrative Agent in its reasonable discretion)) become a Guarantor hereunder by way of execution of a Joinder Agreement. In connection therewith, the Credit Parties shall give notice to the Administrative Agent not less than ten (10) days prior to creating a Subsidiary (or such shorter period of time as agreed to by the Administrative Agent in its reasonable discretion), or acquiring the Equity Interests of any other Person. The Credit Party Obligations shall be secured by, among other things, a first priority perfected security interest in the Collateral of such new Guarantor and a pledge of 100% of the Equity Interests of such new Guarantor and its Domestic Subsidiaries (other than any Domestic Subsidiary that is owned by a Foreign Subsidiary) and 65% of the voting Equity Interests and 100% of the non-voting Equity Interests of its first-tier Foreign Subsidiaries. In connection with the foregoing, the Credit Parties shall deliver to the Administrative Agent, with respect to each new Guarantor to the extent applicable, substantially the same documentation required pursuant to Sections 4.1 (b) – (f), (j), Section 5.12 and such other documents or agreements as the Administrative Agent may reasonably request.

**Section 5.11 Compliance with Law.**

Comply with all Requirements of Law and orders (including Environmental Laws), and all applicable restrictions imposed by all Governmental Authorities, applicable to it and the Collateral if noncompliance with any such Requirements of Law, order or restriction could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**Section 5.12 Pledged Assets.**

(a) Equity Interests. Each Credit Party will cause 100% of the Equity Interests in each of its direct or indirect Domestic Subsidiaries and 65% of the voting Equity Interests and 100% of the non-voting Equity Interests of its first-tier Foreign Subsidiaries, in each case to the extent owned by such Credit Party, to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent pursuant to the terms and conditions of the Security Documents or such other security documents as the Administrative Agent shall reasonably request (subject to Burger King Rights).

(b) Personal Property. Subject to the terms of subsection (c) below, and any other exclusions set forth in the Security Documents, each Credit Party will cause all of

its tangible and intangible personal property (other than real property leases and Franchise Agreements) now owned or hereafter acquired by it to be subject at all times to a first priority, perfected Lien (subject to Permitted Liens) in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Credit Party Obligations pursuant to the terms and conditions of the Security Documents or such other security documents as the Administrative Agent shall reasonably request. Each Credit Party shall, and shall cause each of its Subsidiaries to, adhere to the covenants set forth in the Security Documents.

(c) Real Property.

(i) Each Credit Party shall cause all fee owned real property ("Real Estate") to be subject to a first priority, perfected Lien (subject in each case to Permitted Liens) in favor of the Administrative Agent; provided, however, the Credit Parties shall not be required to cause such real property to be subject to a first priority, perfected Lien to the extent such Credit Party promptly delivers written notice to the Administrative Agent stating that such Credit Party intends to cause such real property to be subject to a Sale Leaseback pursuant to Section 6.12 within 180 days (or, in the case of real property acquired without a Restaurant, 365 days) following the acquisition of such real property (it being understood that the Credit Parties will cause such real property to be subject to a first priority, perfected Lien in accordance with the terms of this clause (c) to the extent such Sale Leaseback is not consummated during such 180 day period (or 365 day period, as applicable).

(ii) In connection with each of the foregoing, each Credit Party will deliver all documentation as the Administrative Agent may reasonably request in connection with the foregoing, including, without limitation, title reports, surveys, zoning letters, environmental reports and opinions of counsel, all in form and substance reasonably satisfactory to the Administrative Agent.

(d) Leases and other Agreements. Each Credit Party shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or public warehouse where any Collateral is or may be located except where the failure to pay or perform could not reasonably be expected to have a Material Adverse Effect.

(e) Cash Collateral. Prior to the Cash Collateral Release Date, each Credit Party will cause the Credit Party Obligations to be fully secured by Cash Collateral (in an amount equal to the Revolving Committed Amount) held in the Revolver Cash Collateral Account and pursuant to the terms and conditions of the Security Documents or such other security documents as the Administrative Agent shall reasonably request.

### **Section 5.13 Further Assurances and Post-Closing Covenants.**

(a) Public/Private Designation. The Credit Parties will cooperate with the Administrative Agent in connection with the publication of certain materials and/or information provided by or on behalf of the Credit Parties to the Administrative Agent and Lenders (collectively, "Information Materials") and will designate Information Materials (i) that are either available to the public or not material with respect to the Credit Parties and their Subsidiaries or any of their respective securities for purposes of United States federal and state securities laws, as "Public Information" and (ii) that are not Public Information as "Private Information".

(b) Additional Information. The Credit Parties shall provide such information regarding the operations, business affairs and financial condition of the Credit Parties and their Subsidiaries as the Administrative Agent or any Lender may reasonably request.

(c) Visits and Inspections. The Credit Parties shall permit representatives of the Administrative Agent or any Lender, from time to time upon prior reasonable notice and at such times during normal business hours, to visit and inspect its properties (including the Collateral); inspect, audit and make extracts from its books, records and files; and discuss with its principal officers, and its independent accountants, its business, assets, liabilities, financial condition, results of operations and business prospects. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent or any Lender may do any of the foregoing at any time without advance notice.

(d) Further Assurances. Upon the reasonable request of the Administrative Agent, promptly perform or cause to be performed any and all acts and execute or cause to be executed any and all documents for filing under the provisions of the UCC or any other Requirement of Law which are necessary or advisable to maintain in favor of the Administrative Agent, for the benefit of the Secured Parties, Liens on the Collateral that are duly perfected in accordance with the requirements of, or the obligations of the Credit Parties under, the Credit Documents and all applicable Requirements of Law.

(e) Post Closing Covenants.

(i) Real Property Collateral. Subject to Section 5.12(c), within ninety (90) days after the Closing Date (or such longer period of time as agreed to by the Administrative Agent in its sole discretion), the Administrative Agent shall have received, in form and substance satisfactory to the Administrative Agent:

(A) fully executed and notarized Mortgage Instruments encumbering the Mortgaged Properties as to properties owned by the Credit Parties;

(B) evidence as to (1) whether any Mortgaged Property is a Flood Hazard Property and (2) if any Mortgaged Property is a Flood Hazard Property, (x) whether the community in which such Mortgaged

Property is located is participating in the National Flood Insurance Program, (y) the applicable Credit Party's written acknowledgment of receipt of written notification from the Administrative Agent (I) as to the fact that such Mortgaged Property is a Flood Hazard Property and (II) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (z) copies of insurance policies or certificates of insurance of the Credit Parties and their Subsidiaries evidencing flood insurance reasonably satisfactory to the Administrative Agent and naming the Administrative Agent as loss payee on behalf of the Lenders;

(C) maps or plats of an as-built survey of the sites of the Mortgaged Properties; it being agreed that the surveys in existence on the Closing Date and provided to the Administrative Agent pursuant to the terms of this clause (C) (along with a certificate of an Authorized Officer of the Borrower reasonably acceptable to the Administrative Agent) are satisfactory;

(D) an environmental questionnaire executed by an Authorized Officer of the Borrower with respect to all owned Mortgaged Properties, along with third-party environmental reviews of all owned Mortgaged Properties, including but not limited to Phase I environmental assessments; it being agreed that the Phase I environmental assessments in existence on the Closing Date and provided to the Administrative Agent pursuant to the terms of this clause (e) are satisfactory;

(E) to the extent requested by the Administrative Agent, opinions of counsel to the Credit Parties for each jurisdiction in which the Mortgaged Properties are located; and

(F) to the extent available, zoning letters from each municipality or other Governmental Authority for each jurisdiction in which the Mortgaged Properties are located.

(ii) Account Control Agreements. Within forty-five (45) days after the Closing Date (or such longer period of time as agreed to by the Administrative Agent in its sole discretion), the Administrative Agent shall have received Deposit Account Control Agreements and Securities Account Control Agreements required to be delivered in accordance with Section 6.14.

#### **Section 5.14 New Restaurants; Franchise Agreements.**

Provide the Administrative Agent, as of the end of each fiscal quarter (beginning with the Second Quarter of 2012), notice of the acquisition, lease or construction (or binding commitment to construct) of any new Restaurant by the Borrower or any Subsidiary (other than Restaurants

acquired in the Burger King Acquisition). The Borrower shall cause to be delivered to the Administrative Agent, promptly upon request by the Administrative Agent or any Lender, a copy of any Franchise Agreement or Lease with respect to any Restaurant.

## ARTICLE VI

### NEGATIVE COVENANTS

Each of the Credit Parties hereby covenants and agrees that on the Closing Date, and thereafter (a) for so long as this Agreement is in effect, (b) until the Commitments have terminated and (c) the Credit Party Obligations and all other amounts owing to the Administrative Agent or any Lender hereunder are paid in full in cash, that:

#### **Section 6.1 Indebtedness.**

No Credit Party will, nor will it permit any Subsidiary to, contract, create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness arising or existing under this Agreement and the other Credit Documents;

(b) Indebtedness of the Credit Parties and their Subsidiaries existing as of the Closing Date and set out more specifically in Schedule 6.1(b) hereto and any renewals, refinancings or extensions thereof in a principal amount not in excess of that outstanding as of the date of such renewal, refinancing or extension and the terms of any such renewal, refinancing or extension are not less favorable in any material respect to the obligor thereunder;

(c) Indebtedness of the Credit Parties and their Subsidiaries incurred after the Closing Date consisting of Capital Leases or Indebtedness incurred to provide all or a portion of the purchase price or cost of construction of an asset; provided that (i) such Indebtedness when incurred shall not exceed the purchase price or cost of construction of such asset; (ii) no such Indebtedness shall be renewed, refinanced or extended for a principal amount in excess of the principal balance outstanding thereon at the time of such renewal, refinancing or extension; and (iii) the total amount of all such Indebtedness shall not exceed \$15,000,000 at any time outstanding;

(d) Unsecured intercompany Indebtedness among the Credit Parties;

(e) Indebtedness and obligations owing under (i) Bank Products and (ii) other Hedging Agreements entered into in the ordinary course of business in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes;

(f) Indebtedness of a Person existing at the time such Person becomes a Subsidiary of a Credit Party in a transaction permitted hereunder in an aggregate principal amount not to exceed \$10,000,000 for all such Persons; provided that any such Indebtedness was not created in anticipation of or in connection with the transaction or series of transactions pursuant to which such Person became a Subsidiary of a Credit Party;

(g) all ASC Section 840-40 lease financing obligations;

(h) Guaranty Obligations in respect of Indebtedness of a Credit Party to the extent such Indebtedness is permitted to exist or be incurred pursuant to this Section;

(i) Indebtedness under the Second Lien Notes in an aggregate principal amount not to exceed \$150,000,000; and

(j) other Indebtedness of Credit Parties in an aggregate amount not to exceed \$10,000,000; provided that the Credit Parties are in pro forma compliance with each of the financial covenants set forth in Section 5.9.

#### **Section 6.2 Liens.**

The Credit Parties will not, nor will they permit any Subsidiary to, contract, create, incur, assume or permit to exist any Lien with respect to any of their respective property or assets of any kind (whether real or personal, tangible or intangible), whether now owned or hereafter acquired, except for the following (the "Permitted Liens"):

(a) Liens created by or otherwise existing under or in connection with this Agreement or the other Credit Documents in favor of the Administrative Agent on behalf of the Secured Parties;

(b) Liens in favor of a Bank Product Provider in connection with a Bank Product; provided that such Liens shall secure the Credit Party Obligations on a pari passu basis;

(c) Liens securing purchase money Indebtedness and Capital Lease Obligations (and refinancings thereof) to the extent permitted under Section 6.1(c); provided, that (i) any such Lien attaches to such property concurrently with or within thirty (30) days after the acquisition thereof and (ii) such Lien attaches solely to the property so acquired in such transaction;

(d) Liens for taxes, assessments, charges or other governmental levies not yet due or as to which the period of grace, if any, related thereto has not expired or which are being contested in good faith by appropriate proceedings; provided that adequate reserves with respect to such contested amounts are maintained on the books of any Credit Party or its Subsidiaries, as the case may be, in conformity with GAAP;

(e) statutory Liens such as carriers', warehousemen's, mechanics', materialmen's, landlords', repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are being contested in good faith by appropriate proceedings;

(f) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation (other than any Lien imposed by ERISA) and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in an aggregate amount not to exceed \$500,000;

(g) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) easements, rights of way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(i) Liens existing on the Closing Date and set forth on Schedule 1.1(b); provided that (i) no such Lien shall at any time be extended to cover property or assets other than the property or assets subject thereto on the Closing Date and improvements thereon and (ii) the principal amount of the Indebtedness secured by such Lien shall not be extended, renewed, refunded or refinanced (except as set forth in Section 6.2(j));

(j) any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any Lien referred to in this definition (other than Liens set forth on Schedule 1.1(b)); provided that such extension, renewal or replacement Lien shall be limited to all or a part of the property which secured the Lien so extended, renewed or replaced (plus improvements on such property);

(k) Liens arising in the ordinary course of business by virtue of any contractual, statutory or common law provision relating to banker's Liens, rights of set-off or similar rights and remedies covering deposit or securities accounts (including funds or other assets credited thereto) or other funds maintained with a depository institution or securities intermediary;

(l) any zoning, building or similar laws or rights reserved to or vested in any Governmental Authority;

(m) restrictions on transfers of securities imposed by applicable Securities Laws;

(n) Liens arising out of judgments or awards not resulting in an Event of Default;

(o) Liens on the property of a Person existing at the time such Person becomes a Subsidiary of a Credit Party in a transaction permitted hereunder securing Indebtedness in an aggregate principal amount not to exceed \$10,000,000 for all such Persons; provided, however, that any such Lien may not extend to any other property of any Credit Party or any other Subsidiary that is not a Subsidiary of such Person; provided, further, that any such Lien was not created in anticipation of or in connection with the transaction or series of transactions pursuant to which such Person became a Subsidiary of a Credit Party;

(p) any interest or title of a lessor, licensor or sublessor under any lease, license or sublease entered into by any Credit Party or any Subsidiary thereof in the ordinary course of its business and covering only the assets so leased, licensed or subleased;

(q) Liens in favor of the Administrative Agent and/or Issuing Lender to Cash Collateralize or otherwise secure the obligations of a Defaulting Lender to fund risk participations hereunder;

(r) assignments of insurance or condemnation proceeds provided to landlords (or their mortgagees) pursuant to the terms of any lease and Liens or rights reserved in any lease for rent or for compliance with the terms of such lease;

(s) Liens securing the Second Lien Notes,

(t) the Burger King Rights; and

(u) additional Liens so long as the principal amount of Indebtedness and other obligations secured thereby does not exceed \$3,000,000 in the aggregate.

Notwithstanding the foregoing, if a Credit Party shall grant a Lien on any of its assets in violation of this Section, then it shall be deemed to have simultaneously granted an equal and ratable Lien on any such assets in favor of the Administrative Agent for the ratable benefit of the Secured Parties, to the extent such Lien has not already been granted to the Administrative Agent.

### **Section 6.3 Nature of Business.**

No Credit Party will, nor will it permit any Subsidiary to, alter the character of its business in any material respect from that conducted as of the Closing Date.

#### **Section 6.4 Consolidation, Merger, Sale or Purchase of Assets, etc.**

The Credit Parties will not, nor will they permit any Subsidiary to,

(a) dissolve, liquidate or wind up its affairs, or sell, transfer, lease or otherwise dispose of its property or assets (each a “Disposition”) or agree to do so at a future time, except the following, without duplication, shall be expressly permitted:

(i) (A) the sale, transfer, lease or other disposition of inventory and materials in the ordinary course of business and (B) the conversion of cash into Cash Equivalents and Cash Equivalents into cash;

(ii) the sale, transfer or other disposition of property or assets to an unrelated party not in the ordinary course of business where and to the extent that they are the result of a Recovery Event; to the extent Net Cash Proceeds from such Recovery Event are reinvested or used to make mandatory prepayments pursuant to Section 2.7(b)(iv);

(iii) the sale, lease, transfer or other disposition of machinery, parts and equipment no longer used or useful in the conduct of the business of the Credit Parties or any of their Subsidiaries;

(iv) the sale, lease or transfer of property or assets from one Credit Party to another Credit Party or dissolution of any Credit Party (other than the Borrower) to the extent any and all assets of such Credit Party are distributed to another Credit Party;

(v) the termination of any Hedging Agreement;

(vi) the sale, lease, transfer, closure or other disposition of Restaurants, the termination or non-renewal of leases and Franchise Agreements or the subletting of Restaurants, in each case as determined to be prudent in the reasonable judgment of the senior officers of the Borrower;

(vii) Sale Leaseback transactions to the extent permitted under Section 6.12;

(viii) the sale, lease or transfer of property or assets not to exceed \$2,500,000 in the aggregate in any fiscal year;

(ix) sale or transfer of Restaurant property or assets to Burger King Corporation pursuant to the asset purchase agreement entered into in connection with the Burger King Acquisition; and

(x) the sale, lease or transfer of the Fiesta Leases to Fiesta or one of its Subsidiaries.

provided that (A) with respect to clauses (ii), (iii), (vi), (vii), (viii) and (ix) above, at least 75% of the consideration received therefor by the Credit Parties or any such Subsidiary shall be in the form of cash or Cash Equivalents, assets used in the business or Capital Stock, (B) after giving effect to any Disposition pursuant to clause (vii) above, the Credit Parties shall be in compliance on a Pro Forma Basis with the financial covenants set forth in Section 5.9 hereof, recalculated for the most recently ended fiscal quarter for which information is available and (C) with respect to clause (vii) above, no Default or Event of Default shall exist or shall result therefrom; provided, further, that with respect to sales of assets permitted hereunder only, the Administrative Agent shall, without the consent of any Lender, release its Liens relating to the particular assets sold; or

(b) (i) purchase, lease or otherwise acquire (in a single transaction or a series of related transactions) the property or assets of any Person, other than (A) Permitted Acquisitions, (B) the lease or acquisition of real property in connection with Permitted Construction Transactions, (C) except as otherwise limited or prohibited herein, purchases or other acquisitions of inventory, materials, property and equipment in the ordinary course of business and (D) Investments permitted by Section 6.5 or (ii) enter into any transaction of merger or consolidation, except for (A) Investments or acquisitions permitted pursuant to Section 6.5 so long as the Credit Party subject to such merger or consolidation is the surviving entity, (B) (y) the merger or consolidation of a Subsidiary that is not a Credit Party with and into a Credit Party; provided that such Credit Party will be the surviving entity and (z) the merger or consolidation of a Credit Party with and into another Credit Party; provided that if the Borrower is a party thereto, the Borrower will be the surviving corporation, and (C) the merger or consolidation of a Subsidiary that is not a Credit Party with and into another Subsidiary that is not a Credit Party.

#### **Section 6.5 Advances, Investments and Loans.**

The Credit Parties will not, nor will they permit any Subsidiary to, make any Investment or contract to make any Investment except for the following (the "Permitted Investments"):

- (a) cash and Cash Equivalents;
- (b) Investments existing as of the Closing Date as set forth on Schedule 1.1(a) (which shall include new Restaurant development);
- (c) receivables owing to the Credit Parties or any of their Subsidiaries or any receivables and advances to suppliers, in each case if created, acquired or made in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;
- (d) Investments in and loans to any Credit Party;

(e) loans and advances to officers, directors and employees in an aggregate amount not to exceed \$200,000 at any time outstanding; provided that such loans and advances shall comply with all applicable Requirements of Law (including Sarbanes-Oxley);

(f) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(g) Permitted Acquisitions;

(h) the construction or development of a new Restaurant; provided, however, that in each such case, at the time such Credit Party enters into a contract obligating a Credit Party or any of its Subsidiaries to commence construction or develop a new Restaurant which obligates any Credit Party to pay greater than \$250,000 in the aggregate (i) no Default or Event of Default shall have occurred and be continuing or would exist after giving effect to the construction or development of the new Restaurant, and (ii) after the Cash Collateral Release Date and after giving effect to the construction or development of such new Restaurant on a Pro Forma basis (A) the Credit Parties are in compliance with each of the financial covenants set forth in Section 5.9 (only to the extent the Credit Parties would otherwise be required to be in compliance therewith) and (B) if any time the Adjusted Leverage Ratio covenant level set forth in Section 5.9(a) is greater than 5.50 to 1.00, the Adjusted Leverage Ratio shall be 0.25 to 1.00 less than the then applicable level set forth in Section 5.9 (each such construction or development of a new Restaurant permitted pursuant to this clause (h) shall be referred to in this Agreement as a "Permitted Construction Transaction");

(i) Bank Products to the extent permitted hereunder;

(j) to the extent permitted by Section 6.10, Investments consisting of redemptions, repurchases, and clawbacks of Second Lien Notes; and

(k) additional loan advances and/or Investments of a nature not contemplated by the foregoing clauses hereof; provided that such loans, advances and/or Investments made after the Closing Date pursuant to this clause shall not exceed an aggregate amount of \$2,000,000 at any one time outstanding.

#### **Section 6.6 Transactions with Affiliates.**

The Credit Parties will not, nor will they permit any Subsidiary to, enter into any transaction or series of transactions, whether or not in the ordinary course of business, with any officer, director, shareholder or Affiliate (or any Spin-Off Party before or after the Spin-Off Date) other than on terms and conditions substantially as favorable as would be obtainable in a comparable arm's-length transaction with a Person other than an officer, director, shareholder or Affiliate, other than (a) transactions solely between or among Credit Parties, (b) the Spin-Off

Documents, (c) the Franchise Agreements, (d) transactions related to the Burger King Acquisition, (e) engage in certain transactions with Burger King Corporation and take other actions or enter into such agreements, arrangements or transactions with Burger King Corporation or any of its Affiliates reasonably deemed necessary or advisable in the reasonable business judgment of the Credit Parties to own and operate Burger King franchises, (f) any Restricted Payment permitted by Section 6.10, (g) the Fiesta Lease Guarantees or leases and subleases with respect to Fiesta Leases and (h) leases and subleases with respect to the BK Leases.

**Section 6.7 Ownership of Subsidiaries; Restrictions.**

The Credit Parties will not, nor will they permit any Subsidiary to, create, form or acquire any Subsidiaries, except for Domestic Subsidiaries that are joined as Additional Credit Parties as required by the terms hereof. The Credit Parties will not sell, transfer, pledge or otherwise dispose of any Equity Interests in any of their Subsidiaries, nor will they permit any of their Subsidiaries to issue, sell, transfer, pledge or otherwise dispose of any of their Equity Interests, except in a transaction permitted by Section 6.4.

**Section 6.8 Corporate Changes; Material Contracts; Franchise Agreements.**

No Credit Party will, nor will it permit any of its Subsidiaries to, (a) change its fiscal quarters or fiscal year, or (b) amend, modify or change its articles of incorporation, certificate of designation (or corporate charter or other similar organizational document) operating agreement or bylaws (or other similar document) in any respect materially adverse to the interests of the Lenders without the prior written consent of the Required Lenders. No Credit Party shall (a) (i) except as permitted under Section 6.4, alter its legal existence or, in one transaction or a series of transactions, merge into or consolidate with any other entity, or sell all or substantially all of its assets, (ii) change its state of incorporation or organization, without providing thirty (30) days prior written notice to the Administrative Agent and without filing (or confirming that the Administrative Agent has filed) such financing statements and amendments to any previously filed financing statements as the Administrative Agent may require, or (iii) change its registered legal name, without providing thirty (30) days prior written notice to the Administrative Agent and without filing (or confirming that the Administrative Agent has filed) such financing statements and amendments to any previously filed financing statements as the Administrative Agent may require, (b) amend, modify, cancel or terminate or fail to renew or extend or permit the amendment, modification, cancellation or termination of any of its Material Contracts in any respect materially adverse to the interests of the Lenders without the prior written consent of the Required Lenders other than in accordance with the terms of such Material Contracts, (c) have more than one state of incorporation, organization or formation, (d) change its accounting method (except in accordance with GAAP) in any manner adverse to the interests of the Lenders without the prior written consent of the Required Lenders or (e) other than in connection with the sale or closure of a Restaurant permitted hereunder, amend, modify, cancel or terminate or fail to renew or extend or permit the amendment, modification, cancellation or termination of any of its Franchise Agreements in any respect materially adverse to the interests of the Lenders without the prior written consent of the Required Lenders.

### **Section 6.9 Limitation on Restricted Actions.**

The Credit Parties will not, nor will they permit any Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any such Person to (a) pay dividends or make any other distributions to any Credit Party on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (b) pay any Indebtedness or other obligation owed to any Credit Party, (c) make loans or advances to any Credit Party, (d) sell, lease or transfer any of its properties or assets to any Credit Party, or (e) act as a Guarantor and pledge its assets pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof or amend or otherwise modify the Credit Documents, except (in respect of any of the matters referred to in clauses (a)-(d) above) for such encumbrances or restrictions existing under or by reason of (i) this Agreement and the other Credit Documents, (ii) applicable law, (iii) any document or instrument governing Indebtedness incurred pursuant to Section 6.1(c); provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (iv) any Permitted Lien or any document or instrument governing any Permitted Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien or (v) the Burger King Rights.

### **Section 6.10 Restricted Payments.**

The Credit Parties will not, nor will they permit any Subsidiary to, directly or indirectly, declare, order, make or set apart any sum for or pay any Restricted Payment, except (a) to make dividends payable solely in the same class of Equity Interests of such Person, (b) to make dividends or other distributions payable to the Credit Parties (directly or indirectly through its Subsidiaries), (c) the payment of any obligations under the Spin-Off Documents, (d) so long as (A) no Default or Event of Default has occurred and is continuing or would result therefrom and (B) the Credit Parties are in compliance with each of the financial covenants set forth in Section 5.9 after giving effect to such Restricted Payment on a Pro Forma Basis (only if required to be in compliance at such time), (i) to repurchase Equity Interests of the Borrower (including rights, options or warrants to acquire such Equity Interests) from employees of the Borrower or any of its Subsidiaries or their authorized representatives upon the death, disability or termination of employment of such employees, and (ii) to purchase, redeem, retire or acquire for value Equity Interests in the Borrower, to the extent still outstanding under the under the Borrower's 2006 Stock Incentive Plan and Equity Interests in Fiesta held by employees, officers or directors or by former employees, officers or directors of the Borrower or its Subsidiaries (or their estates or beneficiaries under their estates) upon death, disability, retirement or termination of employment of such employees, in an aggregate amount not to exceed \$1,000,000 in any fiscal year, (e) so long as no Default of Event of Default has occurred and is continuing, redeem, repurchase or clawback the Second Lien Notes with the net proceeds received by the Borrower from the issuance and sale of the Borrower's Equity Interests, and (f) so long as no Default or Event of Default has occurred and is continuing, redeem or repurchase the Second Lien Notes (other than pursuant clause (e) above); provided that after giving effect to such redemption or repurchase, (A) the Credit Parties' shall have cash and Cash Equivalents together with Revolving Availability of not less than \$5,000,000, (B) after the Cash Collateral Release Date, the Adjusted Leverage Ratio of the Borrower and its Subsidiaries on a Consolidated basis shall be less than 5.25 to 1.00, (C) no Default or Event of Default shall have resulted therefrom and (D) no Revolving Loans may be used to make such redemption or repurchase.

#### **Section 6.11 Amendment of Subordinated Debt.**

The Credit Parties will not, nor will they permit any Subsidiary to, without the prior written consent of the Required Lenders, amend, modify, waive or extend or permit the amendment, modification, waiver or extension of any term of any document governing or relating to any Subordinated Debt in a manner that is adverse to the interests of the Lenders.

#### **Section 6.12 Sale Leasebacks.**

The Credit Parties will not, nor will they permit any Subsidiary to, directly or indirectly, become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an Operating Lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which any Credit Party or any Subsidiary has sold or transferred or is to sell or transfer to a Person which is not a Credit Party or a Subsidiary of a Credit Party or (b) which any Credit Party or any Subsidiary of a Credit Party intends to use for substantially the same purpose as any other property which has been sold or is to be sold or transferred by a Credit Party or a Subsidiary of a Credit Party to another Person which is not a Credit Party or a Subsidiary of a Credit Party in connection with such lease (each a “Sale Leaseback”); provided, that the Credit Parties may enter into Sale Leasebacks so long as (i) the Credit Parties are in compliance with each of the financial covenants set forth in Section 5.9 after giving effect to such Sale Leaseback on a Pro Forma Basis (only if required to be in compliance at such time) and (ii) the proceeds from such Sale Leaseback are used to prepay the Revolving Loans as required pursuant to Section 2.7(b)(ii).

#### **Section 6.13 No Further Negative Pledges.**

The Credit Parties will not, nor will they permit any Subsidiary to, enter into, assume or become subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon any of their properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for such obligation if security is given for some other obligation, except (a) pursuant to this Agreement and the other Credit Documents, (b) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 6.1(c); provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (c) pursuant to the Second Lien Notes Indenture and (d) in connection with any Permitted Lien or any document or instrument governing any Permitted Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien.

#### **Section 6.14 Account Control Agreements; Additional Bank Accounts.**

Set forth on Schedule 3.16(c) is a complete and accurate list of all checking, savings or other accounts (including securities accounts) of the Credit Parties at any bank or other financial institution, or any other account where money is or may be deposited or maintained with any Person

as of the Closing Date. Beginning forty-five (45) days following the Closing Date, each of the Credit Parties will not open, maintain or otherwise have any checking, savings or other accounts (including securities accounts) at any bank or other financial institution, or any other account where money is or may be deposited or maintained with any Person, other than (a) deposit accounts that are subject to a Deposit Account Control Agreement, (b) securities accounts that are subject to a Securities Account Control Agreement, (c) deposit accounts established solely as payroll and other zero balance accounts and (d) other deposit accounts, so long as at any time the balance in any such account does not exceed \$50,000 and the aggregate balance in all such accounts does not exceed \$50,000.

## ARTICLE VII

### EVENTS OF DEFAULT

#### **Section 7.1 Events of Default.**

An Event of Default shall exist upon the occurrence of any of the following specified events (each an “Event of Default”):

(a) Payment. (i) The Borrower shall fail to pay any principal on any Revolving Loan or Revolving Loan Note when due (whether at maturity, by reason of acceleration or otherwise) in accordance with the terms hereof or thereof; or (ii) the Borrower shall fail to reimburse the Issuing Lender for any LOC Obligations when due (whether at maturity, by reason of acceleration or otherwise) in accordance with the terms hereof; or (iii) the Borrower shall fail to provide Cash Collateral when required pursuant to Section 2.3(k); or (iv) the Borrower shall fail to pay any interest on any Revolving Loan or any fee or other amount payable hereunder when due (whether at maturity, by reason of acceleration or otherwise) in accordance with the terms hereof and such failure shall continue unremedied for five (5) days; or (v) or any Guarantor shall fail to pay on the Guaranty in respect of any of the foregoing or in respect of any other Guaranty Obligations hereunder (after giving effect to the grace period in clause (iv)); or

(b) Misrepresentation. Any representation or warranty made or deemed made herein, in the Security Documents or in any of the other Credit Documents or which is contained in any certificate, document or financial or other statement furnished at any time under or in connection with this Agreement shall prove to have been incorrect, false or misleading in any material respect on or as of the date made or deemed made; or

(c) Covenant Default.

(i) Any Credit Party shall fail to perform, comply with or observe any term, covenant or agreement applicable to it contained in Sections 5.1, 5.2(b), 5.4 (to the extent such covenant requires that the Credit Parties and their Subsidiaries preserve, renew and keep in full force and effect their corporate or other formative existence), 5.7, 5.9, 5.13, or Article VI hereof; or

(ii) Any Credit Party shall fail to comply with any other covenant contained in this Agreement or the other Credit Documents or any other agreement, document or instrument among any Credit Party, the Administrative Agent and the Lenders or executed by any Credit Party in favor of the Administrative Agent or the Lenders (other than as described in Sections 7.1(a) or 7.1(c)(i) above) and, with respect to this clause (ii) only, such breach or failure to comply is not cured within thirty (30) days of its occurrence; or

(d) Indebtedness Cross-Default. (i) Any Credit Party or any of its Subsidiaries shall default in any payment of principal of or interest on any Indebtedness (other than the Loans, Reimbursement Obligations, the Guaranty, ASC 840-40 lease financing obligations and Hedging Agreements entered into in the ordinary course of business in order to manage existing or anticipated commodity price risks) in a principal amount outstanding of at least \$5,000,000 for the Credit Parties and any of their Subsidiaries in the aggregate beyond any applicable grace period (not to exceed thirty (30) days), if any, provided in the instrument or agreement under which such Indebtedness was created; or (ii) any Credit Party or any of its Subsidiaries shall default in the observance or performance of any other agreement or condition relating to any Indebtedness (other than the Loans, Reimbursement Obligations, the Guaranty, ASC 840-40 lease financing obligations and Hedging Agreements entered into in the ordinary course of business in order to manage existing or anticipated commodity price risks) in a principal amount outstanding of at least \$5,000,000 in the aggregate for the Credit Parties and their Subsidiaries or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or to be repurchased, prepaid, deferred or redeemed (automatically or otherwise); or (iii) any Credit Party or any of its Subsidiaries shall breach or default any Hedging Agreement that is a Bank Product; or

(e) Other Cross-Defaults. The Credit Parties or any of their Subsidiaries shall default in (i) the payment when due under any Material Contract or (ii) the performance or observance, of any obligation or condition of any Material Contract and, in the case of this clause (ii) only, such failure to perform or observe such other obligation or condition continues unremedied for a period of thirty (30) days after notice of the occurrence of such default unless, but only as long as, the existence of any such default is being contested by the Credit Parties in good faith by appropriate proceedings and adequate reserves in respect thereof have been established on the books of the Credit Parties to the extent required by GAAP except where such default could not be reasonably expected to have a Material Adverse Effect; or

(f) Bankruptcy Default. (i) A Credit Party or any of its Subsidiaries shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization

or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or a Credit Party or any of its Subsidiaries shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against a Credit Party or any of its Subsidiaries any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against a Credit Party or any of its Subsidiaries any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of their assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) a Credit Party or any of its Subsidiaries shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) a Credit Party or any of its Subsidiaries shall generally not, or shall be unable to, or shall admit in writing their inability to, pay its debts as they become due; or

(g) Judgment Default. (i) One or more judgments or decrees shall be entered against a Credit Party or any of its Subsidiaries involving in the aggregate a liability (to the extent not covered by insurance) of \$5,000,000 or more and all such judgments or decrees shall not have been paid and satisfied, vacated, discharged, stayed or bonded pending appeal within the earlier of (A) thirty (30) days from the entry thereof or (B) the expiration of the period during which an appeal of such judgment or decree is permitted or (ii) any injunction, temporary restraining order or similar decree shall be issued against a Credit Party or any of its Subsidiaries that, individually or in the aggregate, could result in a Material Adverse Effect; or

(h) ERISA Default. The occurrence of any of the following to the extent it could reasonably be expected to have a Material Adverse Effect: (i) Any Person shall engage in any “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any “accumulated funding deficiency” (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan (other than a Permitted Lien) shall arise on the assets of the Credit Parties or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) a Credit Party, any of its Subsidiaries or any Commonly Controlled Entity shall, or in the reasonable opinion of the Required Lenders is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, any Multiemployer Plan or (vi) any other similar event or condition shall occur or exist with respect to a Plan; or

(i) Change of Control. There shall occur a Change of Control; or

(j) Invalidity of Guaranty. At any time after the execution and delivery thereof, the Guaranty, for any reason other than the satisfaction in full of all Credit Party Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void, or any Credit Party shall contest the validity, enforceability, perfection or priority of the Guaranty, any Credit Document, or any Lien granted thereunder in writing or deny in writing that it has any further liability, including with respect to future advances by the Lenders, under any Credit Document to which it is a party; or

(k) Invalidity of Credit Documents. Any Credit Document shall fail to be in full force and effect or to give the Administrative Agent and/or the Lenders the security interests, liens, rights, powers, priority and privileges purported to be created thereby (except as such documents may be terminated or no longer in force and effect in accordance with the terms thereof, other than those indemnities and provisions which by their terms shall survive) or any Lien shall fail to be a first priority, perfected Lien on a material portion of the Collateral; or

(l) Subordinated Debt. The subordination provisions contained in any Subordinated Debt shall cease to be in full force and effect or shall cease to give the Lenders the rights, powers and privileges purported to be created thereby; or

(m) Classification as Senior Debt. The Credit Party Obligations shall cease to be classified as “Senior Indebtedness,” “Designated Senior Indebtedness” or any similar designation under any Subordinated Debt instrument; or

(n) Uninsured Loss. Any uninsured damage to or loss, theft or destruction of any assets of the Credit Parties or any of their Subsidiaries shall occur that is in excess of \$5,000,000 (excluding customary deductible thresholds established in accordance with historical past practices).

(o) Franchise Agreements. There shall occur any default or defaults by any one or more Credit Parties beyond the applicable grace period (if any) under any Franchise Agreement and such default or defaults, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

## **Section 7.2 Acceleration; Remedies.**

Upon the occurrence and during the continuance of an Event of Default, then, and in any such event, (a) if such event is a Bankruptcy Event, automatically the Commitments shall immediately terminate and the Revolving Loans (with accrued interest thereon), and all other amounts under the Credit Documents (including, without limitation, the maximum amount of all

contingent liabilities under Letters of Credit) shall immediately become due and payable, and (b) if such event is any other Event of Default, any or all of the following actions may be taken: (i) with the written consent of the Required Lenders, the Administrative Agent may, or upon the written request of the Required Lenders, the Administrative Agent shall, declare the Commitments to be terminated forthwith, whereupon the Commitments shall immediately terminate; (ii) the Administrative Agent may, or upon the written request of the Required Lenders, the Administrative Agent shall, declare the Revolving Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the Revolving Loan Notes to be due and payable forthwith and direct the Borrower to pay to the Administrative Agent Cash Collateral as security for the LOC Obligations for subsequent drawings under then outstanding Letters of Credit an amount equal to the maximum amount of which may be drawn under Letters of Credit then outstanding, whereupon the same shall immediately become due and payable; and/or (iii) with the written consent of the Required Lenders, the Administrative Agent may, or upon the written request of the Required Lenders, the Administrative Agent shall, exercise such other rights and remedies as provided under the Credit Documents and under applicable law.

## ARTICLE VIII

### THE ADMINISTRATIVE AGENT

#### **Section 8.1 Appointment and Authority.**

Each of the Lenders and the Issuing Lender hereby irrevocably appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lender, and neither the Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

#### **Section 8.2 Nature of Duties.**

Anything herein to the contrary notwithstanding, none of the bookrunners, arrangers or other agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Issuing Lender hereunder. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any subagents except to the extent that a court of competent jurisdiction determines in a final and non appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents

### **Section 8.3 Exculpatory Provisions.**

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and its obligations hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Credit Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or

percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.1 and 7.2) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent in writing by the Borrower, a Lender or an Issuing Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

#### **Section 8.4 Reliance by Administrative Agent.**

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Revolving Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Lender prior to the making of such Revolving Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

#### **Section 8.5 Notice of Default.**

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders;

provided, however, that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not taken, only with the consent or upon the authorization of the Required Lenders, or all of the Lenders, as the case may be.

**Section 8.6 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender and the Issuing Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates has made any representation or warranty to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of any Credit Party, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender and the Issuing Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

**Section 8.7 Indemnification.**

The Lenders agree to indemnify the Administrative Agent, and the Issuing Lender in its capacity hereunder and their Affiliates and their respective officers, directors, agents and employees (to the extent not reimbursed by the Credit Parties and without limiting the obligation of the Credit Parties to do so), ratably according to their respective Revolving Commitment Percentages in effect on the date on which indemnification is sought under this Section, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including, without limitation, at any time following the payment of the Credit Party Obligations) be imposed on, incurred by or asserted against any such indemnitee in any way relating to or arising out of any Credit Document or any documents contemplated by or referred to herein or therein or the Transactions or any action taken or omitted by any such indemnitee under or in connection with any of the foregoing; provided, however, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent resulting from such indemnitee's gross negligence or willful misconduct, as determined by a court of competent jurisdiction. The agreements in this Section shall survive the termination of this Agreement and payment of the Revolving Loan Notes, any Reimbursement Obligation and all other amounts payable hereunder.

### **Section 8.8 Administrative Agent in Its Individual Capacity.**

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Credit Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

### **Section 8.9 Resignation of Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lender and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the approval of the Borrower to the extent no Event of Default shall then exist and be continuing (which approval shall not unreasonably be withheld or delayed), to appoint a successor Administrative Agent which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Lender, appoint a successor Administrative Agent meeting the qualifications set forth above subject to the approval of the Borrower to the extent no Event of Default shall then exist and be continuing (which approval shall not unreasonably be withheld or delayed). Whether or not a successor has been appointed, such resignation shall nonetheless become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, subject to the approval of the Borrower to the extent no Event of Default shall then exist and be continuing (which approval shall not unreasonably be withheld or delayed), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except

that in the case of any Collateral held by the Administrative Agent on behalf of the Lenders or the Issuing Lender under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Issuing Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent, and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation or removal hereunder and under the other Credit Documents, the provisions of this Article and Section 9.5 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

(d) Any resignation by Wells Fargo Bank, as Administrative Agent pursuant to this Section shall also constitute its resignation as Issuing Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender, (ii) the retiring Issuing Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Credit Documents, and (iii) the successor Issuing Lender shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

#### **Section 8.10 Collateral and Guaranty Matters.**

(a) The Lenders and the Bank Product Provider irrevocably authorize and direct the Administrative Agent:

(i) to release any Lien on any Collateral granted to or held by the Administrative Agent under any Credit Document (A) upon termination of the Commitments and payment in full of all Credit Party Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (B) that is transferred or to be transferred as part of or in connection with any sale or other disposition permitted under Section 6.4, or (C) subject to Section 9.1, if approved, authorized or ratified in writing by the Required Lenders;

(ii) to subordinate any Lien on any Collateral granted to or held by the Administrative Agent under any Credit Document to the holder of any Lien on such Collateral that is permitted by Section 6.2(c); and

(iii) to release any Guarantor from its obligations under the applicable Guaranty if such Person ceases to be a Guarantor as a result of a transaction permitted hereunder.

(b) In connection with a termination or release pursuant to this Section, the Administrative Agent shall promptly execute and deliver to the applicable Credit Party, at the Borrower's expense, all documents that the applicable Credit Party shall reasonably request to evidence such termination or release. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of Collateral, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section.

#### **Section 8.11 Bank Products.**

Except as otherwise provided herein, no Bank Product Provider that obtains the benefits of Sections 2.11 and 7.2, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Credit Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Credit Documents. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Credit Party Obligations arising under Bank Products unless the Administrative Agent has received written notice (including, without limitation, a Bank Product Provider Notice) of such Credit Party Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Bank Product Provider.

### **ARTICLE IX**

#### **MISCELLANEOUS**

#### **Section 9.1 Amendments, Waivers, Consents and Release of Collateral.**

Neither this Agreement nor any of the other Credit Documents, nor any terms hereof or thereof may be amended, modified, extended, restated, replaced, or supplemented (by amendment, waiver, consent or otherwise) except in accordance with the provisions of this Section nor may Collateral be released except as specifically provided herein or in the Security Documents or in accordance with the provisions of this Section. The Required Lenders may or, with the consent of the Required Lenders, the Administrative Agent may, from time to time, (a) enter into with the Borrower written amendments, supplements or modifications hereto and to the other Credit Documents for the purpose of adding any provisions to this Agreement or the

other Credit Documents or changing in any manner the rights of the Lenders or of the Borrower hereunder or thereunder or (b) waive or consent to the departure from, on such terms and conditions as the Required Lenders may specify in such instrument, any of the requirements of this Agreement or the other Credit Documents or any Default or Event of Default and its consequences; provided, however, that no such amendment, supplement, modification, release, waiver or consent shall:

(i) reduce the amount or extend the scheduled date of maturity of any Revolving Loan or Revolving Loan Note or any installment thereon, or reduce the stated rate of any interest or fee payable hereunder (except in connection with a waiver of Default Interest which shall be determined by a vote of the Required Lenders) or extend the scheduled date of any payment thereof or increase the amount or extend the expiration date of any Lender's Commitment, in each case without the written consent of each Lender directly affected thereby; provided that, it is understood and agreed that no waiver, reduction or deferral of a mandatory prepayment required pursuant to Section 2.7(b), nor any amendment of Section 2.7(b) or the definitions of Asset Disposition, Debt Issuance, or Recovery Event, shall constitute a reduction of the amount of, or an extension of the scheduled date of, or the scheduled date of maturity of, any Revolving Loan or Revolving Loan Note; or

(ii) amend, modify or waive any provision of this Section or reduce the percentage specified in the definition of Required Lenders, without the written consent of all the Lenders; or

(iii) release the Borrower or all or substantially all of the value of the Guaranty, without the written consent of all of the Lenders; provided that the Administrative Agent may release any Guarantor permitted to be released pursuant to the terms of this Agreement; or

(iv) release all or substantially all of the value of the Collateral without the written consent of all of the Lenders; provided that the Administrative Agent may release any Collateral permitted to be released pursuant to the terms of this Agreement or the Security Documents; or

(v) subordinate the Revolving Loans to any other Indebtedness without the written consent of all of the Lenders; or

(vi) permit a Letter of Credit to have an original expiry date more than twenty-four (24) months from the date of issuance without the consent of each of the Lenders; provided, that the expiry date of any Letter of Credit may be extended in accordance with the terms of Section 2.3(a); or

(vii) permit the Borrower to assign or transfer any of its rights or obligations under this Agreement or other Credit Documents without the written consent of all of the Lenders; or

(viii) amend, modify or waive any provision of the Credit Documents requiring consent, approval or request of the Required Lenders or all Lenders without the written consent of the Required Lenders or all the Lenders as appropriate; or

(ix) amend, modify or waive (A) the order in which Credit Party Obligations are paid or (B) the pro rata sharing of payments or Revolving Commitment reductions by and among the Lenders, in each case in accordance with Section 2.6(a), 2.11(b) or 9.7(b) without the written consent of each Lender directly affected thereby; or

(x) amend, modify or waive any provision of Article VIII without the written consent of the then Administrative Agent; or

(xi) amend or modify the definition of Credit Party Obligations to delete or exclude any obligation or liability described therein without the written consent of each Lender directly affected thereby; or

(xii) amend the definitions of "Hedging Agreement," "Bank Product," or "Bank Product Provider" without the consent of any Bank Product Provider that would be adversely affected thereby.

provided, further, that no amendment, waiver or consent affecting the rights or duties of the Administrative Agent or the Issuing Lender under any Credit Document shall in any event be effective, unless in writing and signed by the Administrative Agent and/or the Issuing Lender, as applicable, in addition to the Lenders required hereinabove to take such action.

Any such waiver, any such amendment, supplement or modification and any such release shall apply equally to each of the Lenders and shall be binding upon the Borrower, the other Credit Parties, the Lenders, the Administrative Agent and all future holders of the Revolving Loan Notes. In the case of any waiver, the Borrower, the other Credit Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the outstanding Revolving Loans and Revolving Loan Notes and other Credit Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

Notwithstanding any of the foregoing to the contrary, the consent of the Borrower and the other Credit Parties shall not be required for any amendment, modification or waiver of the provisions of Article VIII (other than the provisions of Section 8.9) if such amendment, modification or waiver does not materially and adversely affect the rights and Obligations of the Credit Parties.

Notwithstanding any of the foregoing to the contrary, the Credit Parties and the Administrative Agent, without the consent of any Lender, may enter into any amendment,

modification or waiver of any Credit Document, or enter into any new agreement or instrument, to (i) effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law or (ii) correct any obvious error or omission of a technical nature, in each case that is immaterial (as determined by the Administrative Agent), in any provision of any Credit Document, if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above, (a) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Revolving Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein, (b) the Required Lenders may consent to allow a Credit Party to use Cash Collateral in the context of a bankruptcy or insolvency proceeding and (c) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except (i) that the Commitment of such Lender may not be increased or extended without the consent of such Lender and (ii) to the extent such amendment, waiver or consent impacts such Defaulting Lender more than the other Lenders.

For the avoidance of doubt and notwithstanding any provision to the contrary contained in this Section 9.1, this Agreement may be amended (or amended and restated) with the written consent of the Credit Parties and the Administrative Agent in accordance with Section 2.22.

#### **Section 9.2 Notices.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows:

(i) If to the Borrower or any other Credit Party:

Carrols Restaurant Group, Inc.  
968 James Street  
Syracuse, New York 13203  
Attention: General Counsel  
Telephone: (315) 424-0513  
Fax: (315) 475-9616  
Email: wmyers@carrols.com

(ii) If to the Administrative Agent:

Wells Fargo Bank, National Association  
1525 West W.T. Harris Blvd.  
Charlotte, NC 28262  
Mail Code: D1109-019  
Attention: Carey Ritenour, Syndication Agency Services  
Telephone: (704) 590-2784  
Fax: (704) 590-2782  
E-mail: Carey.Ritenour@wellsfargo.com

with a copy to:

Wells Fargo Bank, National Association  
1808 Aston Avenue  
Suite 250  
Carlsbad, CA, CA 92008  
Attention: Tim Loyd  
Telephone: (760) 918-2715  
Fax: (760) 918-2727  
Email: tim.loyd@wellsfargo.com

(iii) if to a Lender, to it at its address (or telecopier number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Lender pursuant to Article II if such Lender or the Issuing Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such

notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

(d) Platform.

(i) Each Credit Party agrees that the Administrative Agent may make the Communications (as defined below) available to the Lenders by posting the Communications on Intralinks or a substantially similar electronic transmission system (the "Platform").

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications effected thereby (the "Communications"). No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its affiliates or any of their respective officers, directors, employees, agents, advisors or representatives (collectively, "Agent Parties") have any liability to the Credit Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Credit Party's or the Administrative Agent's transmission of communications through the Platform.

### **Section 9.3 No Waiver; Cumulative Remedies.**

No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

#### **Section 9.4 Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the Revolving Loan Notes and the making of the Revolving Loans; provided that all such representations and warranties shall terminate on the date upon which the Commitments have been terminated and all Credit Party Obligations have been paid in full.

#### **Section 9.5 Payment of Expenses and Taxes; Indemnity.**

(a) Costs and Expenses. The Credit Parties shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the Transactions shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Lender (including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the Issuing Lender), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Lender or the Issuing Lender, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Credit Documents, including its rights under this Section, or (B) in connection with the Revolving Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Revolving Loans or Letters of Credit.

(b) Indemnification by the Credit Parties. The Credit Parties shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, penalties, damages, liabilities, actions, judgments, suits, costs, and related expenses and disbursements (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee), incurred by any Indemnatee or asserted against any Indemnatee by any third party or by the Borrower or any other Credit Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the Transactions, (ii) any Revolving Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Materials of Environmental Concern on or from any property owned or operated by any Credit Party

or any of its Subsidiaries, or any liability under Environmental Law related in any way to any Credit Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Credit Party, and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (B) result from a claim brought by the Borrower or any other Credit Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Credit Document, if the Borrower or such Credit Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This section (b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Credit Parties for any reason fail to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender or such Related Party, as the case may be, such Lender's Revolving Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Issuing Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or Issuing Lender in connection with such capacity.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, none of the Credit Parties shall assert, and each of the Credit Parties hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the Transactions, any Revolving Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the Transactions.

(e) Payments. All amounts due under this Section shall be payable promptly/not later than five (5) Business Days after demand therefor.

(f) Survival. The agreements contained in this Section shall survive the resignation of the Administrative Agent and the Issuing Lender, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of the Credit Party Obligations.

**Section 9.6 Successors and Assigns; Participations.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section or (iv) to an SPC in accordance with the provisions of subsection (f) of this Section (and any other attempted assignment or transfer by any party thereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Revolving Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Revolving Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Revolving Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Revolving Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to

such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$1,000,000 (provided, however, that simultaneous assignments shall be aggregated in respect of a Lender and its Approved Funds), unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Revolving Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Tranches on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of a Revolving Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of such facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the Issuing Lender (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of a Revolving Commitment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) any Credit Party or any of the Credit Party's Affiliates or Subsidiaries or (B) any Defaulting Lender or any of its Subsidiaries or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Revolving Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Revolving Loans and participations in Letters of Credit in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.14 and 9.5 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Charlotte, North Carolina a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Revolving Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice; provided that a Lender shall only be entitled to inspect its own entry in the Register and not that of any other Lender. In addition, the Administrative Agent shall maintain on the Register information regarding the designation and revocation of designation, of any Lender as a Defaulting Lender.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Revolving Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Lenders and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 9.5(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver requiring the approval of 100% of the Lenders. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.16 (subject to the requirements and limitations therein, including the requirements under Section 2.16(g) (it being understood that the documentation required under Section 2.16(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall

not be entitled to receive any greater payment under Section 2.14 or Section 2.16, with respect to any participation, than its participating Lender would have been entitled to receive. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.7(a) as though it were a Lender; provided that such Participant agrees to be subject to Section 9.7(b) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Revolving Loans or other obligations under the Credit Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

#### **Section 9.7 Right of Set-off; Sharing of Payments.**

(a) If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the Issuing Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Credit Party against any and all of the obligations of the Borrower or such Credit Party now or hereafter existing under this Agreement or any other Credit Document to such Lender or the Issuing Lender, irrespective of whether or not such Lender or the Issuing Lender shall have made any demand under this Agreement or any other Credit Document and although such obligations of the Borrower or such Credit Party may be contingent or unmatured or are owed to a branch, office or affiliate of such Lender or the Issuing Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (i) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.21 and,

pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lender and the other Lenders, and (ii) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Credit Party Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the Issuing Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Lender or their respective Affiliates may have. Each Lender and the Issuing Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

(b) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Revolving Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the Administrative Agent of such fact, and (ii) purchase (for cash at face value) participations in the Revolving Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and other amounts owing them, provided that:

(A) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(B) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or participations in Letters of Credit to any assignee or participant, other than to any Credit Party or any Subsidiary thereof (as to which the provisions of this paragraph shall apply) or (z) any amounts received by the Issuing Lender to secure the obligations of a Defaulting Lender to fund risk participations hereunder.

(c) Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Credit Party in the amount of such participation.

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**Section 9.8 Table of Contents and Section Headings.**

The table of contents and the Section and subsection headings herein are intended for convenience only and shall be ignored in construing this Agreement.

**Section 9.9 Counterparts; Effectiveness; Electronic Execution.**

(a) Counterparts; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Borrower, the Guarantors, the Administrative Agent and the Lenders and the Administrative Agent shall have received copies hereof (telefaxed or otherwise), and thereafter this Agreement shall be binding upon and inure to the benefit of the Borrower, the Guarantors, the Administrative Agent and each Lender and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or email shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 9.10 Severability.**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 9.11 Integration.**

This Agreement and the other Credit Documents represent the agreement of the Borrower, the other Credit Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent, the Borrower, the other Credit Parties, or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or therein.

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**Section 9.12 Governing Law.**

This Agreement and the other Credit Documents any claims, controversy or dispute arising out of or relating to this Agreement or any other Credit Document (except, as to any other Credit Document, as expressly set forth therein) shall be governed by, and construed in accordance with, the laws of the State of New York.

**Section 9.13 Consent to Jurisdiction; Service of Process and Venue.**

(a) Consent to Jurisdiction. The Borrower and each other Credit Party irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the courts of the State of New York and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Credit Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York sitting State court or, to the fullest extent permitted by applicable law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Credit Document shall affect any right that the Administrative Agent, any Lender or the Issuing Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Credit Document against the Borrower or any other Credit Party or its properties in the courts of any jurisdiction.

(b) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 9.2. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

(c) Venue. The Borrower and each other Credit Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Credit Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

**Section 9.14 Confidentiality.**

Each of the Administrative Agent, the Lenders and the Issuing Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers,

employees, agents, advisors and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder, under any other Credit Document or Bank Product or any action or proceeding relating to this Agreement, any other Credit Document or Bank Product or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (g) (i) any actual or prospective party (or its partners, directors, officers, employees, managers, administrators, trustees, agents, advisors or other representatives) to any swap or derivative or similar transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (ii) an investor or prospective investor in securities issued by an Approved Fund that also agrees that Information shall be used solely for the purpose of evaluating an investment in such securities issued by the Approved Fund, (iii) a trustee, collateral manager, servicer, backup servicer, noteholder or secured party in connection with the administration, servicing and reporting on the assets serving as collateral for securities issued by an Approved Fund, or (iv) a nationally recognized rating agency that requires access to information regarding the Credit Parties, the Revolving Loans and Credit Documents in connection with ratings issued in respect of securities issued by an Approved Fund (in each case, it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, the Issuing Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, “Information” shall mean all information received from any Credit Party or any of its Subsidiaries relating to any Credit Party or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Issuing Lender on a nonconfidential basis prior to disclosure by any Credit Party or any of its Subsidiaries; provided that, in the case of information received from any Credit Party or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

#### **Section 9.15 Acknowledgments.**

The Borrower and the other Credit Parties each hereby acknowledges that:

- (a) it has been advised by counsel in the negotiation, execution and delivery of each Credit Document;

(b) neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to the Borrower or any other Credit Party arising out of or in connection with this Agreement and the relationship between the Administrative Agent and the Lenders, on one hand, and the Borrower and the other Credit Parties, on the other hand, in connection herewith is solely that of creditor and debtor; and

(c) no joint venture exists among the Lenders and the Administrative Agent or among the Borrower, the Administrative Agent or the other Credit Parties and the Lenders.

**Section 9.16 Waivers of Jury Trial; Waiver of Consequential Damages.**

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 9.17 Patriot Act Notice.**

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

**Section 9.18 Resolution of Drafting Ambiguities.**

Each Credit Party acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of this Agreement and the other Credit Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

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**Section 9.19 Subordination of Intercompany Debt.**

Each Credit Party agrees that all intercompany Indebtedness among Credit Parties (the “Intercompany Debt”) is subordinated in right of payment, to the prior payment in full of all Credit Party Obligations. Notwithstanding any provision of this Credit Agreement to the contrary, provided that no Event of Default has occurred and is continuing, Credit Parties may make and receive payments with respect to the Intercompany Debt to the extent otherwise permitted by this Credit Agreement; provided that in the event of and during the continuation of any Event of Default, no payment shall be made by or on behalf of any Credit Party on account of any Intercompany Debt. In the event that any Credit Party receives any payment of any Intercompany Debt at a time when such payment is prohibited by this Section, such payment shall be held by such Credit Party, in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, to, the Administrative Agent.

**Section 9.20 Continuing Agreement.**

This Credit Agreement shall be a continuing agreement and shall remain in full force and effect until all Credit Party Obligations (other than those obligations that expressly survive the termination of this Credit Agreement) have been paid in full and all Commitments and Letters of Credit have been terminated. Upon termination, the Credit Parties shall have no further obligations (other than those obligations that expressly survive the termination of this Credit Agreement) under the Credit Documents and the Administrative Agent shall, at the request and expense of the Borrower, deliver all the Collateral in its possession to the Borrower and release all Liens on the Collateral; provided that should any payment, in whole or in part, of the Credit Party Obligations be rescinded or otherwise required to be restored or returned by the Administrative Agent or any Lender, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, then the Credit Documents shall automatically be reinstated and all Liens of the Administrative Agent shall reattach to the Collateral and all amounts required to be restored or returned and all costs and expenses incurred by the Administrative Agent or any Lender in connection therewith shall be deemed included as part of the Credit Party Obligations.

**Section 9.21 Reserved.****Section 9.22 Press Releases and Related Matters.**

Other than with respect to disclosures required by law, Governmental Authorities or other regulatory bodies with appropriate jurisdiction, the Credit Parties and their Affiliates agree that they will not in the future issue any press releases or other public disclosure using the name of Administrative Agent or any Lender or their respective Affiliates or referring to this Agreement or any of the Credit Documents without the prior written consent of such Person. The Credit Parties consent to the publication by Administrative Agent or any Lender of customary advertising material relating to the Transactions using the name, product photographs, logo or trademark of the Credit Parties

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**Section 9.23 Appointment of Borrower.**

Each of the Guarantors hereby appoints the Borrower to act as its agent for all purposes under this Agreement and agrees that (a) the Borrower may execute such documents on behalf of such Guarantor as the Borrower deems appropriate in its sole discretion and each Guarantor shall be obligated by all of the terms of any such document executed on its behalf, (b) any notice or communication delivered by the Administrative Agent or the Lender to the Borrower shall be deemed delivered to each Guarantor and (c) the Administrative Agent or the Lenders may accept, and be permitted to rely on, any document, instrument or agreement executed by the Borrower on behalf of each Guarantor.

**Section 9.24 No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each Transaction, each of the Credit Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document) are an arm's-length commercial transaction between the Credit Parties and their Affiliates, on the one hand, and the Administrative Agent and WFS, on the other hand, and the Credit Parties are capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the Transactions and by the other Credit Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction, the Administrative Agent and WFS each is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for any Credit Party or any of their Affiliates, stockholders, creditors or employees or any other Person; (c) neither the Administrative Agent nor WFS has assumed or will assume an advisory, agency or fiduciary responsibility in favor of any Credit Party with respect to any of the Transactions or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Credit Document (irrespective of whether the Administrative Agent or WFS has advised or is currently advising any Credit Party or any of its Affiliates on other matters) and neither the Administrative Agent nor WFS has any obligation to any Credit Party or any of their Affiliates with respect to the Transactions except those obligations expressly set forth herein and in the other Credit Documents; (d) the Administrative Agent and WFS and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Credit Parties and their Affiliates, and neither the Administrative Agent nor WFS has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (e) the Administrative Agent and WFS have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the Transactions (including any amendment, waiver or other modification hereof or of any other Credit Document) and the Credit Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Credit Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent or WFS with respect to any breach or alleged breach of agency or fiduciary duty.

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**Section 9.25 Responsible Officers and Authorized Officers.**

The Administrative Agent and each of the Lenders are authorized to rely upon the continuing authority of the Responsible Officers and the Authorized Officers with respect to all matters pertaining to the Credit Documents including, but not limited to, the selection of interest rates, the submission of requests for Extensions of Credit and certificates with regard thereto. Such authorization may be changed only upon written notice to Administrative Agent accompanied by (a) an updated Schedule 3.29 and (b) evidence, reasonably satisfactory to Administrative Agent, of the authority of the Person giving such notice and such notice shall be effective not sooner than five (5) Business Days following receipt thereof by Administrative Agent (or such earlier time as agreed to by the Administrative Agent).

**ARTICLE X****GUARANTY****Section 10.1 The Guaranty.**

In order to induce the Lenders to enter into this Agreement and any Bank Product Provider to enter into any Bank Product and to extend credit hereunder and thereunder and in recognition of the direct benefits to be received by the Guarantors from the Extensions of Credit hereunder and any Bank Product, each of the Guarantors hereby agrees with the Administrative Agent, the Lenders and the Bank Product Provider as follows: each Guarantor hereby unconditionally and irrevocably jointly and severally guarantees as primary obligor and not merely as surety the full and prompt payment when due, whether upon maturity, by acceleration or otherwise, of any and all Credit Party Obligations. If any or all of the indebtedness becomes due and payable hereunder or under any Bank Product, each Guarantor unconditionally promises to pay such indebtedness to the Administrative Agent, the Lenders, the Bank Product Providers, or their respective order, on demand, together with any and all reasonable expenses which may be incurred by the Administrative Agent or the Lenders in collecting any of the Credit Party Obligations. The Guaranty set forth in this Article X is a guaranty of timely payment and not of collection. The word “indebtedness” is used in this Article X in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of the Borrower, including specifically all Credit Party Obligations, arising in connection with this Agreement, the other Credit Documents or any Bank Product, in each case, heretofore, now, or hereafter made, incurred or created, whether voluntarily or involuntarily, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether or not such indebtedness is from time to time reduced, or extinguished and thereafter increased or incurred, whether the Borrower may be liable individually or jointly with others, whether or not recovery upon such indebtedness may be or hereafter become barred by any statute of limitations, and whether or not such indebtedness may be or hereafter become otherwise unenforceable.

Notwithstanding any provision to the contrary contained herein or in any other of the Credit Documents, to the extent the obligations of a Guarantor shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or

federal law relating to fraudulent conveyances or transfers) then the obligations of each such Guarantor hereunder shall be limited to the maximum amount that is permissible under applicable law (whether federal or state and including, without limitation, the Bankruptcy Code).

**Section 10.2 Bankruptcy.**

Additionally, each of the Guarantors unconditionally and irrevocably guarantees jointly and severally the payment of any and all Credit Party Obligations of the Borrower to the Lenders and any Bank Product Provider whether or not due or payable by the Borrower upon the occurrence of any Bankruptcy Event and unconditionally promises to pay such Credit Party Obligations to the Administrative Agent for the account of the Lenders and to any such Bank Product Provider, or order, on demand, in lawful money of the United States. Each of the Guarantors further agrees that to the extent that the Borrower or a Guarantor shall make a payment or a transfer of an interest in any property to the Administrative Agent, any Lender or any Bank Product Provider, which payment or transfer or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, or otherwise is avoided, and/or required to be repaid to the Borrower or a Guarantor, the estate of the Borrower or a Guarantor, a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such avoidance or repayment, the obligation or part thereof intended to be satisfied shall be revived and continued in full force and effect as if said payment had not been made.

**Section 10.3 Nature of Liability.**

The liability of each Guarantor hereunder is exclusive and independent of any security for or other guaranty of the Credit Party Obligations of the Borrower whether executed by any such Guarantor, any other guarantor or by any other party, and no Guarantor's liability hereunder shall be affected or impaired by (a) any direction as to application of payment by the Borrower or by any other party, or (b) any other continuing or other guaranty, undertaking or maximum liability of a guarantor or of any other party as to the Credit Party Obligations of the Borrower, or (c) any payment on or in reduction of any such other guaranty or undertaking, or (d) any dissolution, termination or increase, decrease or change in personnel by the Borrower, or (e) any payment made to the Administrative Agent, the Lenders or any Bank Product Provider on the Credit Party Obligations which the Administrative Agent, such Lenders or such Bank Product Provider repay the Borrower pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each of the Guarantors waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

**Section 10.4 Independent Obligation.**

The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor or the Borrower, and a separate action or actions may be brought and prosecuted against each Guarantor whether or not action is brought against any other Guarantor or the Borrower and whether or not any other Guarantor or the Borrower is joined in any such action or actions.

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**Section 10.5 Authorization.**

Each of the Guarantors authorizes the Administrative Agent, each Lender and each Bank Product Provider without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder, from time to time to (a) renew, compromise, extend, increase, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Credit Party Obligations or any part thereof in accordance with this Agreement and any Bank Product, as applicable, including any increase or decrease of the rate of interest thereon, (b) take and hold security from any Guarantor or any other party for the payment of this Guaranty or the Credit Party Obligations and exchange, enforce waive and release any such security, (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent and the Lenders in their discretion may determine, (d) release or substitute any one or more endorsers, Guarantors, the Borrower or other obligors and (e) to the extent otherwise permitted herein, release or substitute any Collateral.

**Section 10.6 Reliance.**

It is not necessary for the Administrative Agent, the Lenders or any Bank Product Provider to inquire into the capacity or powers of the Borrower or the officers, directors, members, partners or agents acting or purporting to act on its behalf, and any Credit Party Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

**Section 10.7 Waiver.**

(a) Each of the Guarantors waives any right (except as shall be required by applicable statute and cannot be waived) to require the Administrative Agent, any Lender or any Bank Product Provider to (i) proceed against the Borrower, any other guarantor or any other party, (ii) proceed against or exhaust any security held from the Borrower, any other guarantor or any other party, or (iii) pursue any other remedy in the Administrative Agent's, any Lender's or any Bank Product Provider's whatsoever. Each of the Guarantors waives any defense based on or arising out of any defense of the Borrower, any other guarantor or any other party other than payment in full of the Credit Party Obligations (other than contingent indemnification obligations), including, without limitation, any defense based on or arising out of the disability of the Borrower, any other guarantor or any other party, or the unenforceability of the Credit Party Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower other than payment in full of the Credit Party Obligations. The Administrative Agent may, at its election, foreclose on any security held by the Administrative Agent or a Lender by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent such sale is permitted by applicable law), or exercise any other right or remedy the Administrative Agent or any Lender may have against the Borrower or any other party, or any security, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Credit Party Obligations have been paid in full and the Commitments have been

terminated. Each of the Guarantors waives any defense arising out of any such election by the Administrative Agent or any of the Lenders, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of the Guarantors against the Borrower or any other party or any security.

(b) Each of the Guarantors waives all presentments, demands for performance, protests and notices, including, without limitation, notices of nonperformance, notice of protest, notices of dishonor, notices of acceptance of this Guaranty, and notices of the existence, creation or incurring of new or additional Credit Party Obligations. Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Credit Party Obligations and the nature, scope and extent of the risks which such Guarantor assumes and incurs hereunder, and agrees that neither the Administrative Agent nor any Lender shall have any duty to advise such Guarantor of information known to it regarding such circumstances or risks.

(c) Each of the Guarantors hereby agrees it will not exercise any rights of subrogation which it may at any time otherwise have as a result of this Guaranty (whether contractual, under Section 509 of the U.S. Bankruptcy Code, or otherwise) to the claims of the Lenders or any Bank Product Provider against the Borrower or any other guarantor of the Credit Party Obligations of the Borrower owing to the Lenders or such Bank Product Provider (collectively, the "Other Parties") and all contractual, statutory or common law rights of reimbursement, contribution or indemnity from any Other Party which it may at any time otherwise have as a result of this Guaranty until such time as the Credit Party Obligations shall have been paid in full and the Commitments have been terminated. Each of the Guarantors hereby further agrees not to exercise any right to enforce any other remedy which the Administrative Agent, the Lenders or any Bank Product Provider now have or may hereafter have against any Other Party, any endorser or any other guarantor of all or any part of the Credit Party Obligations of the Borrower and any benefit of, and any right to participate in, any security or collateral given to or for the benefit of the Lenders and/or the Bank Product Providers to secure payment of the Credit Party Obligations of the Borrower until such time as the Credit Party Obligations (other than contingent indemnification obligations) shall have been paid in full and the Commitments have been terminated.

#### **Section 10.8 Limitation on Enforcement.**

The Lenders and the Bank Product Providers agree that this Guaranty may be enforced only by the action of the Administrative Agent acting upon the instructions of the Required Lenders or such Bank Product Provider (only with respect to obligations under the applicable Bank Product) and that no Lender or Bank Product Provider shall have any right individually to seek to enforce or to enforce this Guaranty, it being understood and agreed that such rights and remedies may be exercised by the Administrative Agent for the benefit of the Lenders under the terms of this Agreement and for the benefit of any Bank Product Provider under any Bank Product.

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**Section 10.9 Confirmation of Payment.**

The Administrative Agent and the Lenders will, upon request after payment of the Credit Party Obligations which are the subject of this Guaranty and termination of the Commitments relating thereto, confirm to the Borrower, the Guarantors or any other Person that such indebtedness and obligations have been paid and the Commitments relating thereto terminated, subject to the provisions of Section 10.2.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by its proper and duly authorized officers as of the day and year first above written.

**BORROWER:**

**CARROLS RESTAURANT GROUP, INC.,**  
a Delaware corporation

By:       /s/ William E. Myers        
Name: William E. Myers  
Title: VP, Secretary and General Counsel

**GUARANTORS:**

**CARROLS CORPORATION,**  
a Delaware corporation

By:       /s/ William E. Myers        
Name: William E. Myers  
Title: VP, Secretary and General Counsel

**CARROLS LLC**  
a Delaware limited liability company

By:       /s/ William E. Myers        
Name: William E. Myers  
Title: VP, Secretary and General Counsel

**ADMINISTRATIVE AGENT:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**, as a Lender  
and as Administrative Agent

By:       /s/      Darcy McLaren        
Name: Darcy McLaren  
Title: Director

**LENDERS:**

COOPERATIVE CENTRALE RAIFFEISEN-BOERENLEENBANK  
B.A. “RABOBANK NEDERLAND”, NEW YORK BRANCH, as a  
Lender

By: /s/ Theodore W. Cox  
Name: Theodore W. Cox  
Title: Executive Director

By: /s/ Sue Chen-Holmes  
Name: Sue Chen-Holmes  
Title: Vice President

## UNAUDITED CONDENSED COMBINED PRO FORMA FINANCIAL INFORMATION

### Introduction

We refer to Carrols Restaurant Group, Inc. as “Carrols Restaurant Group” and, together with its consolidated subsidiaries, as “we,” “our” and “us” unless otherwise indicated or the context otherwise requires. Any reference to “Carrols” refers to our wholly-owned subsidiary, Carrols Corporation, a Delaware corporation, and its consolidated subsidiaries, unless otherwise indicated or the context otherwise requires. Any reference to “Carrols LLC” refers to the wholly-owned subsidiary of Carrols, Carrols LLC, a Delaware limited liability company, unless otherwise indicated or the context otherwise requires. Any reference to “Fiesta Restaurant Group” refers to our former indirect wholly-owned subsidiary, Fiesta Restaurant Group, Inc., a Delaware corporation, unless otherwise indicated or the context otherwise requires.

We use a 52 or 53 week fiscal year ending on the Sunday closest to December 31. For convenience, all references herein to the fiscal years ended January 3, 2010, January 2, 2011 and January 1, 2012 will hereinafter be referred to as the fiscal years ended December 31, 2009, 2010 and 2011, respectively. All references herein to the three months ended April 3, 2011 and April 1, 2012 will hereinafter be referred to as the three months ended March 31, 2011 and 2012, respectively. Our fiscal year ended December 31, 2009 contained 53 weeks. Our fiscal years ended December 31, 2010 and 2011 each contained 52 weeks. The three months ended March 31, 2011 and 2012 each contained thirteen weeks.

Our common stock is listed on The NASDAQ Global Market under the symbol “TAST.” As previously disclosed by us, on May 7, 2012, we completed the spin-off of our wholly-owned subsidiary, Fiesta Restaurant Group by distributing all of the outstanding shares of Fiesta Restaurant Group common stock to our stockholders, which we refer to as the “spin-off.”

On May 30, 2012, we closed the acquisition of 278 Burger King restaurants, which we refer to as the “acquired restaurants” from Burger King Corporation. Total cash consideration is approximately \$16.2 million and includes \$3.8 million to be paid over five years. Non-cash consideration to BKC includes a 28.9% equity ownership interest in Carrols Restaurant Group (subject to certain limitations as previously disclosed). The acquired restaurants are located in seven Mid-Atlantic, Midwestern and Southeastern states. Additionally, pursuant to an operating agreement between us and BKC, which we refer to as the “operating agreement,” BKC assigned its right of first refusal on sales of restaurants by franchisees, which we refer to as the “ROFR,” to us in 20 states for 20 years or until we operate 1,000 Burger King restaurants, subject to compliance with the operating agreement. We have agreed to remodel 455 Burger King restaurants to BKC’s “20/20” restaurant image, including 57 restaurants in 2012, 154 restaurants in 2013, 154 restaurants in 2014 and 90 restaurants in 2015. We refer to such acquisition transaction as the “acquisition”.

Any reference herein to BKC refers to Burger King Holdings, Inc. and its wholly-owned subsidiaries, including Burger King Corporation.

The following unaudited condensed combined pro forma financial information has been derived by applying pro forma adjustments to our historical consolidated financial statements. The unaudited condensed combined pro forma balance sheet as of March 31, 2012 gives effect to the transactions (as defined below) as if such events occurred as of such date. The unaudited condensed combined pro forma statement of operations for the three months ended March 31, 2011, the three months ended March 31, 2012 and the year ended December 31, 2011 give effect to the transaction (as defined below) as if such events occurred on January 1, 2011. The unaudited condensed pro forma statement of operations for the years ended December 31, 2009 and 2010 remove the full year financial results of Fiesta Restaurant Group as if the spin-off occurred on the first day of each such period. The operating results of Fiesta Restaurant Group are shown as income or loss from discontinued operations, net of tax, in the accompanying statement of operations data.

As used herein, the term “transactions” means (i) the spin-off, (ii) the acquisition, (iii) the issuance by us of \$150 million of 11.25% Senior Secured Second Lien Notes due 2018, which we refer to as the “notes,” (iv) our entering into a new \$20.0 million revolving credit facility, (v) the repayment of outstanding borrowings under the Carrols LLC senior credit facility and the settlement of our pre-existing interest rate swap agreement and (vi) the fees and expenses related to the foregoing.

The unaudited condensed combined pro forma financial statements should be read in conjunction with our historical consolidated financial statements and the notes thereto that are included in our filings with the Securities and Exchange Commission (the “SEC”). The historical financial information for Fiesta Restaurant Group has been derived from our internal records. The historical financial statements for the acquired restaurants have been derived from the audited Statements of Assets Acquired and Liabilities Assumed and the related Statements of Revenues and Direct Operating Expenses for the acquired restaurants are included as Exhibit 99.2 to our Current Report on Form 8-K filed with the SEC on May 18, 2012. The Statements of Revenue and Direct Operating Expenses were derived from BKC’s historical accounting records and represent (i) net revenues that were directly attributable to the acquired restaurants and (ii) cost allocations and estimates of certain direct expenses which were based on assumptions that BKC’s management believes are reasonable. Certain expenses, including corporate overhead expenses, interest and taxes, were not allocated to the acquired restaurants. Consequently, these amounts do not represent the revenues and direct operating expenses of the 278 acquired restaurants had they been operated independently and are not comparable to net income as calculated in accordance with GAAP. In addition, the Statements of Revenue and Direct Operating Expenses for the acquired restaurants were calculated based on a calendar year, rather than a 52/53 week fiscal year, which may affect comparability.

The unaudited condensed combined pro forma financial statements do not include all disclosures required by GAAP. As a result of the spin-off, when we issue financial statements in future periods, the historical results of Fiesta Restaurant Group will be reclassified as a discontinued operation in accordance with Financial Accounting Standards Board Codification Topic 205-20, Presentation of Financial Statements — Discontinued Operations.

The unaudited condensed combined pro forma financial information does not give effect to any anticipated synergies, operating efficiencies or costs savings that may be associated with the acquisition. This information also does not include any integration costs we may incur related to the acquisition.

Pro forma adjustments to the historical financial information include adjustments that we deem reasonable and appropriate and are factually supported based on currently available information. The pro forma adjustments also include estimates of the allocation of the purchase price for the acquisition which requires extensive use of accounting estimates and judgments to allocate the purchase price to tangible and intangible assets acquired and liabilities assumed based on their respective fair values. The amounts allocated to the assets acquired and liabilities assumed in the unaudited pro forma combined financial statements are based on management’s preliminary estimates of their respective fair values. Definitive allocations will be performed and finalized based upon valuations that will be performed following the acquisition. These unaudited condensed combined pro forma financial statements are included for comparative purposes only, and may not be indicative of what actual results would have been had the transactions occurred on the dates indicated. The unaudited condensed combined pro forma financial statements do not purport to present our separate financial results of operations or financial condition for future periods following the spin-off and may differ from the adjustments that will be calculated to report Fiesta Restaurant Group’s business as a discontinued operation in our financial statements in the future. The allocation of the purchase price for the acquisition as presented herein may also differ from the final allocations to be included in our financial statements in future periods.

**CARROLS RESTAURANT GROUP, INC.**  
**UNAUDITED CONDENSED COMBINED PRO FORMA BALANCE SHEET**  
**March 31, 2012**  
**(Dollars in thousands)**

	<b>Historical Carrols Restaurant Group</b>	<b>Spin-off Pro Forma Adjustments(1)</b>	<b>Financing Pro Forma Adjustments(2)</b>	<b>Acquisition Pro Forma Adjustments(3)</b>	<b>Combined Pro Forma Carrols Restaurant Group</b>
<b>ASSETS</b>					
Current assets:					
Cash	\$ 5,271	\$ (4,727)	\$ 82,575	\$ (12,133)	\$ 70,986
Trade and other receivables	8,186	(4,824)	—	—	3,362
Inventories	5,784	(2,127)	—	2,500	6,157
Prepaid rent	4,027	(2,346)	—	—	1,681
Prepaid expenses and other current assets	6,143	(2,854)	—	—	3,289
Refundable income taxes	4,759	—	—	—	4,759
Deferred income taxes	4,542	(1,845)	—	—	2,697
Total current assets	38,712	(18,723)	82,575	(9,633)	92,931
Property and equipment, net	196,894	(115,767)	—	40,275	121,402
Franchise rights, net	66,440	—	—	20,440	86,880
Goodwill	124,934	(123,484)	—	—	1,450
Intangible assets, net	272	(272)	—	—	—
Franchise agreements, net	5,080	—	—	9,443	14,523
Deferred financing fees	8,257	(6,657)	3,001	—	4,601
Other assets	5,670	(2,660)	—	54	3,064
Total assets	<u>\$ 446,259</u>	<u>\$ (267,563)</u>	<u>\$ 85,576</u>	<u>\$ 60,579</u>	<u>\$ 324,851</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
Current liabilities:					
Current portion of long-term debt	\$ 6,554	\$ (60)	\$ (6,494)	\$ 1,701	\$ 1,701
Accounts payable	13,988	(7,854)	—	—	6,134
Accrued interest	2,348	(2,325)	—	—	23
Accrued payroll, related taxes and benefits	18,566	(9,861)	—	—	8,705
Accrued real estate taxes	3,244	(1,902)	—	—	1,342
Other liabilities	11,698	(5,704)	—	760	6,754
Total current liabilities	56,398	(27,706)	(6,494)	2,461	24,659
Long-term debt, net of current portion	257,227	(200,933)	93,844	9,158	159,296
Lease financing obligations	10,266	(9,072)	—	—	1,194
Deferred income — sale-leaseback of real estate	36,556	(17,305)	—	—	19,251
Deferred income taxes	3,391	7,506	—	—	10,897
Accrued postretirement benefits	1,943	—	—	—	1,943
Other liabilities	22,458	(12,987)	—	2,854	12,325
Total liabilities	388,239	(260,497)	87,350	14,473	229,565
Commitments and contingencies					
Total stockholders' equity	58,020	(7,066)	(1,774)	46,106	95,286
Total liabilities and stockholders' equity	<u>\$ 446,259</u>	<u>\$ (267,563)</u>	<u>\$ 85,576</u>	<u>\$ 60,579</u>	<u>\$ 324,851</u>

See Accompanying Notes to Unaudited Condensed Combined Pro Forma Balance Sheet.

**CARROLS RESTAURANT GROUP, INC.**

**NOTES TO UNAUDITED CONDENSED COMBINED PRO FORMA BALANCE SHEET**

- (1) Reflects the spin-off of Fiesta Restaurant Group which occurred on May 7, 2012. Such financial information for Fiesta Restaurant Group was included in Carrols Restaurant Group's consolidated balance sheet as of March 31, 2012 and was derived from the separate books and records of Fiesta Restaurant Group and its subsidiaries.
- (2) Reflects the financing transactions, including the (i) issuance of \$150.0 million of notes, (ii) repayment of \$0.9 million of outstanding revolving credit borrowings and the \$61.8 million of outstanding term loan borrowings under the Carrols LLC senior credit facility and (iii) payment of \$4.8 million of fees and expenses related to the financing transactions which includes \$0.2 million for the settlement of our interest rate swap agreement, resulting in net cash proceeds of \$82.6 million.
- (3) As previously disclosed by us, the acquired restaurants were purchased by us and Carrols LLC for a 28.9% equity ownership interest in Carrols Restaurant Group by issuing to BKC 100 shares of Carrols Restaurant Group's Series A Convertible Preferred Stock. Under the purchase method of accounting, the aggregate purchase price is allocated to the net tangible and intangible assets based on their estimated fair values on the acquisition date. For purposes of estimating the total purchase price of \$58.5 million we included the cash consideration to BKC of \$16.2 million and an assumed value for the preferred stock of \$42.3 million. The value for the preferred stock was based on an estimated 9.4 million common shares, the number of shares that the preferred stock would be convertible into (without giving effect to certain issuance limitations), at an assumed stock price of \$4.50 per share. The preferred stock will be determined based on the common stock price at or around the closing date of the acquisition. The purchase price allocation below assumes a stock price of \$4.50. If the assumed stock price was increased to \$5.00 per share, it would increase the resulting franchise right asset by \$4.7 million to \$25.1 million and would result in \$0.1 million of additional annual amortization expense. If the assumed stock price was decreased to \$4.00 per share, it would decrease the resulting franchise rights asset by \$4.7 million to \$15.7 million and would result in \$0.1 million of reduced annual amortization expense. This preliminary estimate of the purchase price and allocation to identifiable net assets and to identifiable intangible assets acquired represents our current estimates. The final calculation may differ from the amounts set forth herein, and all such amounts are subject to closing adjustments and the final determination of the purchase price including amounts to be allocated to the acquired assets. The estimated allocation of the purchase price to acquired assets is as follows:

(Dollars in thousands)	
Cash	\$ 417
Inventory	2,500
Restaurant equipment(a)	29,416
Favorable/Unfavorable leases(b)	54
Capital lease asset for equipment(c)	10,859
Capital lease obligation for equipment(c)	(10,859)
Refranchising fee(d)	9,443
Liability for ROFR(e)	(3,805)
Franchise rights(f)	20,440
Total estimated purchase price	<u>\$ 58,465</u>

- (a) Represents the purchase of restaurant equipment at its net carrying value which we have assumed approximates fair value.
- (b) Represents the allocation of purchase price to net favorable/unfavorable leases based upon the values that were recorded by BKC as determined in October 2010, the date of the acquisition of BKC by 3G Special Situations Fund II, L.P., an affiliate of 3G Capital Partners Ltd.

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**CARROLS RESTAURANT GROUP, INC.**

**NOTES TO UNAUDITED CONDENSED COMBINED PRO FORMA  
BALANCE SHEET – (Continued)**

- (c) Reflects the assumption of a \$7.3 million capital lease obligation related to certain restaurant equipment that was installed at 186 acquired restaurants as of March 31, 2012 and an additional \$3.6 million in capital lease obligations for certain restaurant equipment scheduled to be installed in an additional 92 restaurants which we are committed to assume.
- (d) Represents the allocation of purchase price to franchise fees based upon the current fair value to enter into franchise agreements with BKC and consistent with the rate that franchisees pay BKC for such agreements.
- (e) Represents the liability recorded in connection with the acquisition of the ROFR and other pre-approval rights for future acquisitions granted to us, which are payable over a five-year period to BKC in twenty quarterly installments of \$0.2 million, with the first installment payable on May 30, 2012.
- (f) The excess of purchase price over the value assigned to the net tangible and identifiable intangible assets acquired has been allocated to franchise rights. This allocation is a preliminary estimate and could change based on a subsequent valuation of franchise rights which could result in an allocation to goodwill.

**CARROLS RESTAURANT GROUP, INC.**  
**UNAUDITED CONDENSED PRO FORMA STATEMENT OF OPERATIONS**  
**Year Ended December 31, 2009**  
**(Dollars in thousands)**

	<b>Historical Carrols Restaurant Group</b>	<b>Spin-off of Fiesta Restaurant Group</b>	<b>Pro Forma Carrols Restaurant Group</b>
Revenues:			
Restaurant sales	\$ 814,534	\$ (430,514)	\$ 384,020
Franchise royalty revenues and fees	1,606	(1,606)	—
Total revenues	<u>816,140</u>	<u>(432,120)</u>	<u>384,020</u>
Costs and expenses:			
Cost of sales	237,446	(132,070)	105,376
Restaurant wages and related expenses	239,553	(120,105)	119,448
Restaurant rent expense	49,709	(25,728)	23,981
Other restaurant operating expenses	117,761	(60,384)	57,377
Advertising expense	31,172	(14,959)	16,213
General and administrative	51,851	(31,411)(1)	20,440
Depreciation and amortization	32,520	(17,805)	14,715
Impairment and other lease charges	2,771	(2,284)	487
Other income (expense)	(720)	799	79
Total operating expenses(14)	<u>762,063</u>	<u>(403,947)</u>	<u>358,116</u>
Income from continuing operations	54,077	(28,173)	25,904
Interest expense	19,638	(10,731)	8,907
Income from continuing operations, before income taxes	34,439	(17,442)	16,997
Provision for income taxes	12,604	(6,576)(2)	6,028
Income from continuing operations, net of tax	21,835	(10,866)	10,969
Income from discontinued operations, net of tax	—	10,424	10,424
Net income	<u>\$ 21,835</u>	<u>\$ (442)</u>	<u>\$ 21,393</u>

See accompanying Notes to Unaudited Condensed Combined Pro Forma Statement of Operations.

**CARROLS RESTAURANT GROUP, INC.**  
**UNAUDITED CONDENSED PRO FORMA STATEMENT OF OPERATIONS**  
**Year Ended December 31, 2010**  
**(Dollars in thousands)**

	<b>Historical Carrols Restaurant Group</b>	<b>Spin-off of Fiesta Restaurant Group</b>	<b>Pro Forma Carrols Restaurant Group</b>
Revenues:			
Restaurant sales	\$ 794,611	\$ (437,538)	\$ 357,073
Franchise royalty revenues and fees	1,533	(1,533)	—
Total revenues	<u>796,144</u>	<u>(439,071)</u>	<u>357,073</u>
Costs and expenses:			
Cost of sales	240,635	(135,236)	105,399
Restaurant wages and related expenses	235,075	(122,519)	112,556
Restaurant rent expense	48,578	(25,410)	23,168
Other restaurant operating expenses	114,643	(60,041)	54,602
Advertising expense	30,362	(15,396)	14,966
General and administrative	51,021	(31,834)(1)	19,187
Depreciation and amortization	32,459	(17,105)	15,354
Impairment and other lease charges	7,323	(6,614)	709
Other income	(444)	—	(444)
Total operating expenses(14)	<u>759,652</u>	<u>(414,155)</u>	<u>345,497</u>
Income from continuing operations	36,492	(24,916)	11,576
Interest expense	18,805	(9,848)	8,957
Income from continuing operations, before income taxes	17,687	(15,068)	2,619
Provision for income taxes	5,771	(5,297)(2)	474
Income from continuing operations, net of tax	11,916	(9,771)	2,145
Income from discontinued operations, net of tax	—	9,152	9,152
Net income	<u>\$ 11,916</u>	<u>\$ (619)</u>	<u>\$ 11,297</u>

See accompanying Notes to Unaudited Condensed Combined Pro Forma Statement of Operations.

**CARROLS RESTAURANT GROUP, INC.**

**UNAUDITED CONDENSED COMBINED PRO FORMA STATEMENT OF OPERATIONS**

**Year Ended December 31, 2011**

**(Dollars in thousands)**

	<b>Historical Carrols Restaurant Group</b>	<b>Spin-off of Fiesta Restaurant Group</b>	<b>Pro Forma Carrols Restaurant Group</b>	<b>Historical Acquired Restaurants</b>	<b>Pro Forma Adjustments</b>	<b>Combined Pro Forma Carrols Restaurant Group</b>
<b>Revenues:</b>						
Restaurant sales	\$ 820,767	\$ (473,249)	\$ 347,518	\$ 294,880	\$ —	\$ 642,398
Franchise royalty revenues and fees	1,719	(1,719)	—	—	—	—
Total revenues	<u>822,486</u>	<u>(474,968)</u>	<u>347,518</u>	<u>294,880</u>	<u>—</u>	<u>642,398</u>
<b>Costs and expenses:</b>						
Cost of sales	256,571	(152,711)	103,860	97,176	—	201,036
Restaurant wages and related expenses	238,254	(129,083)	109,171	92,486	—	201,657
Restaurant rent expense	48,727	(26,062)	22,665	14,013	9,916(3)	46,594
Other restaurant operating expenses	115,266	(61,877)	53,389	39,237	13,270(4)	105,896
Advertising expense	30,688	(16,264)	14,424	14,126	(119)(5)	28,431
General and administrative	57,088	(36,175)(1)	20,913	6,019	1,074(6)	28,006
Depreciation and amortization	33,522	(17,464)	16,058	17,532	(6,471)(7)	27,119
Impairment and other lease charges	4,037	(2,744)	1,293	—	—	1,293
Other income	(574)	(146)	(720)	—	—	(720)
Total operating expenses(14)	<u>783,579</u>	<u>(442,526)</u>	<u>341,053</u>	<u>280,589(11)</u>	<u>17,670</u>	<u>639,312</u>
Income from continuing operations	38,907	(32,442)	6,465	14,291(12)	(17,670)	3,086
Interest expense	21,031	(13,678)	7,353	1,736	9,162(8)	18,251
Loss on extinguishment of debt	2,470	—	2,470	—	1,661(9)	4,131
Income (loss) from continuing operations, before income taxes	15,406	(18,764)	(3,358)	12,555(13)	(28,493)	(19,296)
Provision (benefit) for income taxes	4,188	(6,276)(2)	(2,088)	—	(6,375)(10)	(8,463)
Income (loss) from continuing operations, net of tax	11,218	(12,488)	(1,270)	12,555(13)	(22,118)	(10,833)
Income from discontinued operations, net of tax	—	11,718	11,718	—	—	11,718
Net income	<u>\$ 11,218</u>	<u>\$ (770)</u>	<u>\$ 10,448</u>	<u>\$ 12,555(13)</u>	<u>\$ (22,118)</u>	<u>\$ 885</u>

See accompanying Notes to Unaudited Condensed Combined Pro Forma Statement of Operations.

**CARROLS RESTAURANT GROUP, INC.**  
**UNAUDITED CONDENSED COMBINED PRO FORMA STATEMENT OF OPERATIONS**  
**Three Months Ended March 31, 2011**  
**(Dollars in thousands)**

	<b>Historical Carrols Restaurant Group</b>	<b>Spin-off of Fiesta Restaurant Group</b>	<b>Pro Forma Carrols Restaurant Group</b>	<b>Historical Acquired Restaurants</b>	<b>Pro Forma Adjustments</b>	<b>Combined Pro Forma Carrols Restaurant Group</b>
Revenues:						
Restaurant sales	\$ 196,873	\$ (115,251)	\$ 81,622	\$ 69,806	\$ —	\$ 151,428
Franchise royalty revenues and fees	365	(365)	—			
Total revenues	197,238	(115,616)	81,622	69,806	—	151,428
Costs and expenses:						
Cost of sales	60,315	(36,344)	23,971	23,541	—	47,512
Restaurant wages and related expenses	58,568	(31,633)	26,935	22,376	—	49,311
Restaurant rent expense	12,054	(6,344)	5,710	3,364	2,399(3)	11,473
Other restaurant operating expenses	27,924	(14,743)	13,181	9,530	3,141(4)	25,852
Advertising expense	7,503	(4,119)	3,384	3,073	243(5)	6,700
General and administrative	13,856	(8,745)(1)	5,111	1,480	375(6)	6,966
Depreciation and amortization	8,108	(4,279)	3,829	4,176	(1,580)(7)	6,425
Impairment and other lease charges	1,080	(266)	814	—	—	814
Other income	(106)	—	(106)	—	—	(106)
Total operating expenses(14)	189,302	(106,473)	82,829	67,540(11)	4,578	154,947
Income (loss) from continuing operations	7,936	(9,143)	(1,207)	2,266(12)	(4,578)	(3,519)
Interest expense	4,613	(2,252)	2,361	413	1,798(8)	4,572
Income (loss) from continuing operations, before income taxes	3,323	(6,891)	(3,568)	1,853(13)	(6,376)	(8,091)
Provision (benefit) for income taxes	1,077	(2,314)(2)	(1,237)	—	(1,809)(10)	(3,046)
Income (loss) from continuing operations, net of tax	2,246	(4,577)	(2,331)	1,853(13)	(4,567)	(5,045)
Income from discontinued operations, net of tax	—	4,471	4,471	—	—	4,471
Net income (loss)	\$ 2,246	\$ (106)	\$ 2,140	\$ 1,853(13)	\$ (4,567)	\$ (574)

See accompanying Notes to Unaudited Condensed Combined Pro Forma Statement of Operations.

**CARROLS RESTAURANT GROUP, INC.**

**UNAUDITED CONDENSED COMBINED PRO FORMA STATEMENT OF OPERATIONS**

**Three Months Ended March 31, 2012**

**(Dollars in thousands)**

	<b>Historical Carrols Restaurant Group</b>	<b>Spin-off of Fiesta Restaurant Group</b>	<b>Pro Forma Carrols Restaurant Group</b>	<b>Historical Acquired Restaurants</b>	<b>Pro Forma Adjustments</b>	<b>Combined Pro Forma Carrols Restaurant Group</b>
<b>Revenues:</b>						
Restaurant sales	\$ 211,016	\$ (125,566)	\$ 85,450	\$ 73,438	\$ —	\$ 158,888
Franchise royalty revenues and fees	576	(576)	—	—	—	—
Total revenues	<u>211,592</u>	<u>(126,142)</u>	<u>85,450</u>	<u>73,438</u>	<u>—</u>	<u>158,888</u>
<b>Costs and expenses:</b>						
Cost of sales	66,906	(40,784)	26,122	25,284	—	51,406
Restaurant wages and related expenses	61,696	(33,825)	27,871	23,860	—	51,731
Restaurant rent expense	11,933	(6,250)	5,683	3,602	2,482(3)	11,767
Other restaurant operating expenses	29,472	(15,829)	13,643	9,165	3,305(4)	26,113
Advertising expense	6,991	(4,295)	2,696	2,772	716(5)	6,184
General and administrative	17,370	(11,134)(1)	6,236	1,335	(85)(6)	7,486
Depreciation and amortization	9,014	(4,321)	4,693	4,497	(1,707)(7)	7,483
Impairment and other lease charges	6,926	(6,900)	26	—	—	26
Total operating expenses(14)	<u>210,308</u>	<u>(123,338)</u>	<u>86,970</u>	<u>70,515(11)</u>	<u>4,711</u>	<u>162,196</u>
Income (loss) from continuing operations	1,284	(2,804)	(1,520)	2,923(12)	(4,711)	(3,308)
Interest expense	6,297	(5,382)	915	426	3,229(8)	4,570
Loss on extinguishment of debt	—	—	—	—	1,661(9)	1,661
Income (loss) from continuing operations, before income taxes	(5,013)	2,578	(2,435)	2,497(13)	(9,601)	(9,539)
Benefit for income taxes	<u>(1,486)</u>	<u>1,097(2)</u>	<u>(389)</u>	<u>—</u>	<u>(2,842)(10)</u>	<u>(3,231)</u>
Income (loss) from continuing operations, net of tax	(3,527)	1,481	(2,046)	2,497(13)	(6,759)	(6,308)
Loss from discontinued operations, net of tax	—	(1,449)	(1,449)	—	—	(1,449)
Net income (loss)	<u>\$ (3,527)</u>	<u>\$ 32</u>	<u>\$ (3,495)</u>	<u>\$ 2,497(13)</u>	<u>\$ (6,759)</u>	<u>\$ (7,757)</u>

See accompanying Notes to Unaudited Condensed Combined Pro Forma Statement of Operations.

**CARROLS RESTAURANT GROUP, INC.**

**NOTES TO UNAUDITED CONDENSED COMBINED PRO FORMA STATEMENT OF OPERATIONS**

- (1) Reflects an adjustment to general and administrative expense resulting from the spin-off including our corporate general and administrative expenses, payment for services provided by us to Fiesta Restaurant Group under a transition services agreement entered into in connection with the spin-off and the elimination of non-recurring expenses incurred by us in connection with the spin-off.

The following table summarizes the components of incremental general and administrative expense for the respective periods:

	Years Ended December 31,			Three Months Ended March 31,	
	2009	2010	2011	2011	2012
	<b>(Dollars in thousands)</b>				
Corporate expenses previously allocated(a)	\$ 7,432	\$ 8,006	\$ 9,256	\$ 2,147	\$ 2,978
Expense for stock-conversion(b)	—	—	—	—	(336)
Payments received under the Transition Services Agreement(c)	(6,695)	(6,695)	(6,695)	(1,674)	(1,674)
Eliminate expenses associated with the Spin-off	—	(280)	(1,277)	(297)	(1,022)
	<u>\$ 737</u>	<u>\$ 1,031</u>	<u>\$ 1,284</u>	<u>\$ 176</u>	<u>\$ (54)</u>

- (a) The administrative support provided by Carrols to us was previously allocated based on estimates and a pro-rata percentage of Pollo Tropical and Taco Cabana revenues, number of restaurants or number of employees. Such costs previously allocated to Fiesta Restaurant Group have been added back to general and administrative expenses, net of costs that would have been directly attributable to Fiesta Restaurant Group.
- (b) For the three months ended March 31, 2012, corporate general and administrative expenses have been reduced by \$0.3 million (including stock-based compensation) related to the conversion of employee stock options to restricted and unrestricted common stock of Carrols Restaurant Group in connection with the spin-off.
- (c) Net payments estimated to be received by us for providing services under the transition services agreement are anticipated to be approximately \$6.7 million per year. Pro forma adjustments reflect the historical payments assumed to have been received had we been providing such support services to Fiesta Restaurant Group under a similar arrangement for the years ended December 31, 2010 and 2009. The estimated net payments to be received by us reflected in the pro forma financial statements are an estimate and may vary depending upon the type and level of services provided. In addition, Fiesta Restaurant Group may terminate the prior transition services agreement with respect to any service thereunder at any time upon 90 days written notice.
- (2) The income tax expense (benefit) related to the pre-tax effects of pro forma adjustments is based on an incremental tax rate of 40%.
- (3) Reflects an adjustment to record rent expense on 81 BKC-owned properties to be leased to us under leases with BKC at a rate based on a percentage of historical restaurant sales for each property and to record rent for the reclassification of leases that BKC classified as capital leases to operating leases for us.

**CARROLS RESTAURANT GROUP, INC.**  
**NOTES TO UNAUDITED CONDENSED COMBINED PRO FORMA**  
**STATEMENT OF OPERATIONS—(Continued)**

The following table summarizes the components of incremental rent expense:

	<b>Year ended December 31, 2011</b>	<b>Three months ended March 31, 2011</b>	<b>2012</b>
	<b>(Dollars in thousands)</b>		
Rent on BKC owned properties	\$ 6,152	\$ 1,456	\$ 1,539
Reclassification to rent for restaurant property leases previously classified as capital leases	3,764	943	943
	<u>\$ 9,916</u>	<u>\$ 2,399</u>	<u>\$ 2,482</u>

- (4) Represents an adjustment to reflect royalties payable to BKC under the new franchise agreements to be entered into in conjunction with the acquisition for the acquired restaurants at the contractual rate of 4.5% of gross restaurant sales.
- (5) Adjusts advertising expense for the acquired restaurants to the contractual rate of 4.75% of restaurant sales under the new franchise agreements entered into in conjunction with the acquisition including 4.0% of restaurant sales payable to BKC and investment spending no less than 0.75% of restaurant sales in the designated marketing area where the franchised restaurants are located.
- (6) Reflects an estimated \$0.4 million increase in general and administrative expense for each of the three months ended March 31, 2011 and 2012 and an estimated \$1.5 million increase to general and administrative expense for the year ended December 31, 2011 related to additional corporate administrative support. Also reflects a reduction to general and administrative expenses of \$0.4 million for the year ended December 31, 2011 and \$0.5 million for the three months ended March 31, 2012 related to non-recurring costs incurred for the acquisition.
- (7) Reflects the removal of depreciation expense for buildings and leasehold improvements owned by BKC which will be leased by Carrols LLC and are included in the historical depreciation expense of the acquired restaurants. This is offset partially by amortization of the franchise fees over the term of the respective franchise agreements, the amortization of franchise rights over an estimated 35 year life and depreciation on capital lease assets acquired. The following summarizes the components of total depreciation expense for the respective periods:

	<b>Year ended December 31, 2011</b>	<b>Three months ended March 31, 2011</b>	<b>2012</b>
	<b>(Dollars in thousands)</b>		
Reversal of depreciation on BKC owned assets	\$ (8,985)	\$(2,209)	\$(2,297)
Amortization of franchise fees	624	156	156
Depreciation on capital lease assets acquired	1,306	327	288
Amortization of franchise rights	584	146	146
	<u>\$ (6,471)</u>	<u>\$(1,580)</u>	<u>\$(1,707)</u>

**CARROLS RESTAURANT GROUP, INC.**

**NOTES TO UNAUDITED CONDENSED COMBINED PRO FORMA  
STATEMENT OF OPERATIONS—(Continued)**

- (8) Total incremental interest expense for the respective periods includes interest on the notes, amortization of deferred financing costs associated with the notes, a reversal of previously recorded interest expense on historical debt and a reversal of prior capital lease interest and recording of interest on capital lease obligations committed to for the acquired stores. For the three months ended March 31, 2011 and 2012 and the year ended December 31, 2011 these amounts were \$1.8 million, \$3.2 million and \$9.2 million, respectively.
- (9) Reflects the write-off of deferred financing costs associated with the prior outstanding indebtedness under the Carrols LLC senior credit facility.
- (10) The income tax expense (benefit) related to the combined pretax effects of the historical acquired restaurants and pro forma adjustments is based on an incremental tax rate of 40%.
- (11) Represents “Total Direct Costs and Expenses” as set forth in the Statements of Revenue and Direct Operating Expenses for the acquired restaurants for the relevant period and may not include all those items that would be included in Total Operating Expenses in accordance with GAAP.
- (12) Represents “Revenues less total direct costs and expenses less interest expense” derived from the Statements of Revenue and Direct Operating Expenses for the acquired restaurants for the relevant period and may not include all those items that would be included in Income from Continuing Operations in accordance with GAAP.
- (13) Represents “Revenues less total direct costs and expenses” as set forth in the Statements of Revenue and Direct Operating Expenses for the acquired restaurants for the relevant period and may not include all those items that would be included in Income from Continuing Operations before Income Tax or Net Income in accordance with GAAP.
- (14) After giving effect to the spin-off, stock based compensation expense for Carrols Restaurant Group was \$868, \$884 and \$1,037 for the years ended December 31, 2009, 2010 and 2011, respectively, and \$256 and \$275 for the three months ended March 31, 2011 and 2012, respectively.